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The Compleat Canadian
Copyright Act

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Current, Past & Proposed
Provisions of the Act

1921 to 1996


Harry Hillman Chartrand

Compiler Press

Saskatoon, Saskatchewan, Canada

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1997



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The Compleat Canadian Copyright Act

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INTRODUCTION

1. WHAT & WHEN

This work represents a compilation of current, past and proposed provisions of the Canadian *Copyright Act* (henceforth "the Act") from 1921 to 1996. It has been compiled from 44 sources including:

- a) 36 statutes passed by Parliament between 1921 and 1995;
- b) 4 draft statutes considered between 1987 and 1996 but not passed by Parliament including Bill C-32 1996 - *An Act to amend the Copyright Act*, First Reading in the House of Commons; and,
- c) 4 major official reports published between 1977 and 1986. The recommendations of these reports have been assigned to relevant sections of the Act by the author. The four reports are:

- the 1977 Keyes/Brunet Report - *Copyright in Canada: Proposals for a Revision of the Law* (cited as CC)
- the 1984 Government White Paper - *From Gutenberg to Telidon* (GT);
- the 1985, unanimous, all-party House of Commons' Sub-Committee Report - *A Charter of Rights for Creators* (CRC); and,
- the 1986 report - *Government Response to the Sub-Committee Report on Revision of Copyright* (GRCRC).

Two major studies, however, are not cited in this work. They will be reviewed and recommendations assigned to relevant sections of the Act in a subsequent edition of this work. The two reports are:

- the 1957 Ilsley Commission Report - *Report of the Royal Commission on Patents, Copyright, Trademarks and Industrial Design*; and,
- the 1971 Economic Council Report - *Report on Intellectual Property*.

Notwithstanding these omissions, inclusion of provisions proposed in the four official reports and in draft statutes provide an added dimension to this work. It thus presents not just what is the law today and what it was yesterday but also what it might have become or what it may become in future. This extra dimension is most apparent in a series of supplements to sections of the Act presented in Part 3 of this work and entitled, among others, "Right Not Adopted", "Infringement Not Adopted", etc.

All documents cited in this work are listed and referenced in **Part 1: Chronology**. Highlights of each document are also presented. Citation references for draft statutes and official reports are also provided therein. The following standard citation references are, however, used in the **Chronology** and throughout the main body of the text.

- a) S.C. - Statutes of Canada followed by the year and chapter

number, e.g. S.C. 1988, c. 15 which reads: "Statutes of Canada 1988, chapter 15";

b) R.S. - Revised Statutes of Canada followed by the year and consolidated chapter number, e.g. R.S. 1985, c. C-42 which reads: "Revised Statutes of Canada 1985, consolidated chapter 42"; and,

c) s. or ss. - section or sections of a statute, e.g. S.C. 1988, c. 65, ss. 61-64 which reads: "Statutes of Canada 1988, chapter 65, sections 61 to 64".

2. WHY & WHERE

Intellectual property rights including copyright (as well as registered industrial designs, trade marks and patents) constitute the legal foundation for industrial organization in the emerging global knowledge-based economy. It is important to know from where we have come to determine where we are and where we may be going in this new economy. Accordingly, the purpose of this work is to trace the evolution of copyright law in Canada including currently proposed revisions of the Act.

Copyright varies significantly among members of the community of nations. In effect, copyright law is a distinct cultural artifact defining the rights and privileges of a country's artists, authors, creators and copyright owners. Even the term 'copyright' is culturally specific to English-speaking countries. In French-speaking countries, by contrast, the appropriate term is 'droit d'auteur' or author's rights.

Furthermore, national laws and policies governing most goods and services are increasingly subject to 'harmonization' for purposes of international trade. This means, for example, that a common definition of 'subsidy' for purposes of the North American Free Trade Agreement and the World Trade Organization are under development and will eventually be implemented. This will severely limit the degrees of freedom available to national governments to draft different and distinctive economic policies, rules and regulations.

Copyright, however, is limited by the milder international constraint of 'national treatment'. This means a nation which is a signatory to one of various international conventions must extend to foreigners the same rights and privileges it extends to its own citizens. This means rights and privileges granted by one country need not be the same as those granted by others. Accordingly, this work concerns only the changing rights and privileges granted to artists, authors, creators and copyright owners in Canada. Within the limits imposed by international conventions, one can not simply assume that the same rights and privileges necessarily exist in any other country.

3. HOW & WHO

Currently the Act exists in pieces spread out in a number of different statutes, i.e. at present there is no single document containing all provisions of the existing Act. Accordingly, this work has been constructed based on the *Revised Statutes of Canada 1985*,

c. C-42 plus provisions contained in 16 amending statutes. Provisions of prior statutes, official reports and Bill C-32 1996 were then reviewed and assigned, where possible, to existing sections of the Act.

In this work, the main headings of the current Act have been compiled and are presented in **Part 2(a): Index by Major Heading**. Similarly, section headings of the Act have been compiled and are presented in **Part 2(b): Index by Major & Section Heading**.

Provisions of the Act - current, past and proposed - are then presented in **Part 3: By Section**. In the text, provisions of the current Act are presented first. They are displayed in 12 point Classic font, right-hand adjusted. For example, current section 5(1) is presented in the following format:

5. (1) Conditions for subsistence of copyright

Subject to this Act, copyright shall subsist in Canada for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if any one of the following conditions is met:

S.C. 1993, c. 44, s. 57(1)

Past provisions of the Act passed by Parliament but since repealed or amended are displayed in 10 point Classic font, right-hand adjusted. The period during which such provisions where in force is also provided. Past provisions are presented immediately after the relevant current section. For example, with respect to section 5(1), past provisions are presented in the following format:

1921 1993

5. (1) Conditions for obtaining copyright

Subject to [the provisions of this Act,]¹ this Act, copyright shall subsist in Canada for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if the author was at the date of the making of the work a British subject, a citizen or subject of a foreign country that has adhered to the Convention and the Additional Protocol thereto set out in Schedule II or a resident [within His Majesty's Dominions]² within Her Majesty's Realms and Territories, and if, in the case of a published work, the work was first published [within His Majesty's Dominions]² within Her Majesty's Realms and Territories or in that foreign country, but in no other works, except in so far as the protection conferred by this Act is extended as hereinafter provided to foreign countries to which this Act does not extend.

S.C. 1921, c. 24, s. 4(1)¹ II;
R.S. 1927, c. C-32, s. 4(1)¹ II;
R.S. 1952, c. C-55, s. 4(1)¹;
R.S. 1970, c. C-30, s. 4(1);
R.S. 1985, c. C-42, s. 5(1)

As evidenced in the above example, past provisions were also amended through time. In the above example, the last provision before the coming into force of the current 1993 amendment was contained in R.S. 1985, c. C-42. Provisions prior to the most recent wording, e.g. S.C. 1921, c. 24, are displayed in brackets in 8 point Classic font. Past wording is referenced to the appropriate statute by Roman numeral.

Provisions of Bill C-32 1996 are displayed in 10 point Helvetica font, not right-hand adjusted. Amendments and other changes proposed in Bill C-32 1996 are presented after past provisions of the Act. For example, in the case of existing section 5(1)(a) the change proposed in Bill C-32 1996 is presented in the following format:

INTRODUCTION

1996

5.1(a) in the case of any work, whether published or unpublished, including a cinematographic work, the author was, at the date of the making of the work a citizen or subject of, or a person ordinarily resident in a treaty country;

Bill C-32 1996, s. 5(1)

Provisions of draft statutes as well as official reports are displayed in 9 point Helvetica font, not right-hand adjusted. Amendments and other changes proposed in draft statutes and official reports follow changes proposed in Bill C-32 1996. For example, with respect to existing section 5(1) of the Act, the recommendation contained in the 1984 government white paper *From Gutenberg to Telidon* is presented in the following format:

1984

To ensure that the revised *Copyright Act* includes new creations as well as new forms of expression of existing works, the Act will apply to original works defined in accordance with a generic phrase and classified into specific categories of works. Every work coming within the *Copyright Act* will be entitled to protection, regardless of its mode or form of expression and of the means by which it may be reproduced, perceived or communicated. As there is no overriding case to be made for changing these general categories, the four main classes will be retained, but sound recordings and cinematographic works will be treated as separate categories. In addition, the new Act will be drafted in such a way as to ensure that choreography does not require a story line to be protected.

GT pp.9-10

Redundant, transitional and unassignable provisions of past statutes as well as provisions proposed in draft statutes not passed by Parliament and recommendations of official reports are presented in **Part 4: Redundant, Transitional and Unassigned**

Provisions. For example, between 1931 and 1970, publishers were required to deliver copies of books to the Librarian of Parliament. In R.S. 1952, c. C-55, for example, this provision read:

COPIES TO LIBRARIAN OF PARLIAMENT

52. Copies for Library

The publisher of every book published in Canada, within three months after the publication thereof, shall deliver or cause to be delivered, at his own expense, to the Librarian of Parliament, who shall give a written receipt thereof, two copies of the first edition and two copies of each subsequent edition if such subsequent edition contains additions or alterations either in the letter press or in the maps, prints or other engravings thereto belonging.

R.S. 1952, c. C-55, s. 52

However, no such provision exists in the current Act. Accordingly, it could not be assigned. It is, therefore, presented in Section 4.

It is important to note that the author is not a lawyer. Rather he is a cultural economist who has worked in the field for over twenty-years. His interest in copyright is both experiential and theoretic. From a theoretic point of view copyright defines the core of cultural economics, i.e. it defines the legal foundation of what is bought and sold in the cultural sector of the economy, i.e. property rights in what is created by artists and other creators.

His experience with copyright reform began with the now defunct federal Bureau of Intellectual Property during preparation of the 1977 Keyes/Brunet Report. This experience continued during his ten-year tenure as research director for the Canada Council. Over his career, the author has

assigned recommendations of the four major official reports cited in this work to relevant sections of the Act. These assignments were published in three progressively expanded guides to copyright reform including:

- the 1977 *Proposed Revisions to the Copyright Act, R.S.C. 1970, c. C-30* prepared for the Secretary of State by FUTURES, Ottawa, 1977;
- the 1984 *Guide to Canadian Copyright Reform: A Cross-Reference of Proposed Revisions & the Act (Copyright in Canada 1977 & From Gutenberg to Telidon 1984)*; Research & Evaluation, Canada Council, Ottawa, 1984; and,
- the 1988 *Guide to Canadian Copyright Reform: Bill C-60 1987*, Research & Evaluation, Canada Council, Ottawa, 1988

While all errors and omissions are the responsibility of the author, he wishes to acknowledge the support and inspiration provided by the following people:

- Judge Maxwell Cohen and his wonderful wife Isley with whom he spent hours in Ottawa arguing about law and law reform in Canada;
- Andy Hubertz, Head, Government Publications Section, University of Saskatchewan Library;
- Jim Russell, intellectual property lawyer with Gauley & Co. in Saskatoon;
- Inga and John Scherer of Pathfinder Marine in Montreal who helped keep the whole system up and going; and,
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Harry Hillman Chartrand
Cultural Economist & Publisher
Compiler Press
Saskatoon, Saskatchewan, Canada
January 15, 1997

Part 1 CHRONOLOGY

PRECURSOR STATUTES *[not cited in this work]*

i - 1906

An Act respecting Copyright
R.S. 1906, c. 70

Assent

-

Short Title

Copyright Act, R.S. c. 62

Highlights
Imperial Copyright Act

ii - 1908

An Act to amend the Copyright Act
S.C. 1908, c. 17
7-8 Edward VII

Assent

March 17, 1908

Short Title

none

Highlights
Registration of Copyright
at Department of Agriculture

iii - 1915

An Act to amend the Criminal Code
S.C. 1915, c. 12, s.4
5 George V

Assent

April 15, 1915

Short Title

The Criminal Code Amendment Act, 1915

Highlights

Criminal Penalties
s. 4(a) - for-profit
performing rights
infringement
s. 4(b) - change in or
suppression of title or
playwright's name

3. 1927

An Act respecting Copyright
R.S. 1927, c. C- 32

Assent

-

Short Title

Copyright Act, 1921, c. 24

Highlights
Revised Copyright Act

4. 1931

An Act to amend the Copyright Act
S.C. 1931, c. 8
21-22 George V

Assent

June 11, 1931

Short Title

The Copyright Amendment Act, 1931

Highlights

Introduce
s. 2 - definition of
"literary, dramatic
musical and artistic
work" and "work"
s. 3 - right in cinematograph
and radio communication
s. 5 - author's right to restrain
acts prejudicial to his
honour or reputation
s. 6 - performance without
private profit
s. 8 - Commissioner of Patents
responsible for administration
of *Copyright Act*
s. 10 - performing rights
associations, societies & companies
s. 11 - deposit copies at
Library of Parliament
s. 12 - Rome Convention

STATUTES, PROPOSED STATUTES & OFFICIAL REPORTS

[cited in this work]

1. 1921

*An Act to amend and consolidate the Law
relating to Copyright*
S.C. 1921, c. 24
11-12 George V

Assent

June 4, 1921

Short Title

The Copyright Act, 1921

Highlights
Canadian Copyright Act

2. 1923

An Act to amend The Copyright Act, 1921
S.C. 1923, c.10
13-14 George V

Assent

June 13, 1923

Short Title

The Copyright Amendment Act, 1923

Highlights

s. 2 - non-application to
British Subjects and citizens
of Berne Convention countries
s. 3 - Customs & Excise ban
on infringing copies
s. 4 - establish the Copyright Office
s. 5 - proclamation date of 24/01/01
by Governor in Council
per S.C. c. 24, s. 50

5. 1935

*An Act to amend The Copyright Amendment Act,
1931*
S.C. 1935, c. 18
25-26 George V

Assent

April 17, 1935

Short Title

none

Highlights

Introduce:
s. 1 - right of action barred
when fees paid, tendered
or pending inquiry

6. 1936

*An Act to amend The Copyright Amendment Act,
1931*
S.C. 1936, c. 28
I Edward VIII

Assent

June 23, 1936

Short Title

none

Highlights

Introduce:
s. 2 - Copyright Appeal Board
s. 2 - Governor in Council
prescribe fees for
performing rights
associations, societies &
companies

7. 1938

An Act to amend The Copyright Amendment Act, 1931, and the Copyright Act
S.C. 1938, c. 27
2 George VI

Assent

June 24, 1938

Highlights

s. 4 - radio performance in place other than theatre

Short Title

none

8. 1950

An Act to provide for the Publication of Statutory Regulations
S.C., 1950, c. 50, s. 10
14 George VI

Assent

June 30, 1950

Highlights

Schedule 10 - amendment of publication process for performing rights fee schedules in *Canada Gazette*

Short Title

The Regulations Act

9. 1952

An Act respecting Copyright
R.S. 1952, c. C-55

Assent

-

Highlights

Revised Copyright Act

Short Title

The Copyright Act, R.S., c. 32

A. 1957

Report on Copyright
Royal Commission on Patents, Copyright, Trademarks and Industrial Design (*Ilsey Report*)
Queen's Printer
Ottawa 1957

Highlights

Royal Commission Report

Not cited

10. 1966

An Act respecting the organization of the Government of Canada and matters related or incidental thereto
S.C. 1966-67, c.25, s.8 & Sch. A, Part II
14-15 Elizabeth II

Assent

June 16, 1966

Highlights

Department of Registrar General established and Minister responsible for *Copyright Act*

Short Title

Government Reorganization Act, 1966

11. 1967

An Act to establish a Department of Consumer and Corporate Affairs
S.C. 1967-68, c.16, s. 10 & Sch. I
16 Elizabeth II

Assent

December 21, 1967

Highlights

s. 10 - Department established and Minister of Consumer and Corporate Affairs responsible for *Copyright Act*

Short Title

Department of Consumer and Corporate Affairs Act

12. 1969

An Act respecting the organization of the Government of Canada and matters related or incidental thereto
S.C. 1968-69, c.28, s. 105 & Sch. B
17-18 Elizabeth II

Assent

March 28, 1969

Highlights

s. 105 - fees payable to Receiver General rather than Minister of Finance

Short Title

Government Organization Act, 1969

13. 1970

An Act respecting copyright
R.S. 1970, c. C-30

Assent

-

Highlights

Revised Copyright Act

Short Title

Copyright Act, R.S., c. 55

B. 1971

Report on Intellectual Property
Economic Council of Canada
Information Canada
Ottawa 1971

Highlights

Economic Council Report

Not cited

14. 1972

An Act to amend the Copyright Act
R.S. 1970 (1972), c.4 (2nd Supp.)

Assent

1972

Highlights

s. 1 - clarification of nature and term of copyright in records and contrivances

Short Title

none

15. 1972

An Act respecting the Federal Court of Canada
R.S. 1970 (1972), c. 10 (2nd Supp.), Sch II, Item 10

Assent

1972

Highlights

change from Exchequer to Federal Court

Short Title

Federal Court Act

16. 1975

An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states

CHRONOLOGY

S.C. 1974-75, 76, c. 50, s. 47

23-24 Elizabeth II

Assent
June 19, 1975

Highlights
exemption from
infringement

Short Title
Cultural Property Export and Import Act

17. 1977

An Act to correct certain anomalies, inconsistencies, archaisms, errors and other matters of a non-controversial and uncomplicated nature in the Revised Statutes of Canada, 1970, and other Acts subsequent to 1970

S. C. 1976-77 c. 28, s. 10

25-26 Elizabeth II

Assent
June 29, 1977

Highlights
proclamation date for
substituting rights changed
from 21/06/4 to 24/01/01

Short Title
*Miscellaneous Statute Law
Amendment Act, 1977*

18. 1977

*Copyright in Canada:
Proposals for a Revision of the Law*
A.A. Keyes and C. Brunet
Consumer and Corporate Affairs Canada
Ottawa 1977

Assent
n.a.
Citation Reference
C.C.

Highlights
White Paper

19. 1981

An Act to correct certain anomalies, inconsistencies, archaisms, errors and other matters of a non-controversial and uncomplicated nature in the Revised Statutes of Canada, 1970, and other Acts subsequent to 1970

S.C. 1980-81, 82-83, c. 47, s. 9

29-30 Elizabeth II

Assent
February 19, 1981

Highlights
exemption from
infringement for contrivances
made for persons unable
to read print

Short Title
*Miscellaneous Statute Law
Amendment Act, 1981*

20. 1982

An Act to enact the Access to Information Act and the Privacy Act, to amend the Federal Court Act and the Canada Evidence Act, and to amend certain other Acts in consequence thereof

S.C. 1980-81-82, c. 111, s. 5

29-30-31 Elizabeth II

Assent
July 7, 1982

Highlights
exemption from infringement
for purposes of c. 111

Short Title
Access to Information Act & Privacy Act

21. 1984

An Act to correct certain anomalies, inconsistencies, archaisms, errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada

S.C. 1984, c. 40, s. 18

32-33 Elizabeth II

Assent
June 29, 1984

Highlights
change date for filing
performing rights schedules

Short Title
*Miscellaneous Statute Law
Amendment Act, 1984*

22. 1984

An Act to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada

R.S. 1985 (1984), c. 10 (1st Supp.), s. 1

Assent
June 29, 1984

Highlights
change date for filing
performing rights schedules

Short Title
none

23. 1984

From Gutenberg to Telidon A White Paper on Copyright: Proposals for the Revision of the Canadian Copyright Act
Hon. Judy Erola and Hon. Francis Fox
Consumer & Corporate Affairs &
Communications Canada
Ottawa 1984

Assent
n.a.

Highlights
White Paper

Citation Reference
GT

24. 1985

An Act respecting copyright

R.S. 1985, c. C-42

Assent
-

Highlights
Revised Copyright Act

Short Title
Copyright Act, R.S., c. C-30

25. 1985

A Charter of Rights for Creator
Sub-Committee on the Revision of Copyright,
Standing Committee on Communications &
Culture,
House of Commons Canada
Supply and Services Canada
Ottawa 1985

Assent
n.a.

Highlights
Parliamentary
Committee Report

Citation Reference in Work
CRC

26. 1986

Government Response to Sub-Committee on the Revision of Copyright
Hon. Michel Côté and Hon Marcel Masse
Consumer & Corporate Affairs &
Communications Canada
Ottawa 1986

Assent
n.a.

Highlights
Government Response
to the Parliamentary
Committee Report

Citation Reference
GRCRC

27. 1987

An Act respecting the National Archives of Canada and records of government institutions of Canada and to amend other Acts in relation thereto

S.C. 1987, c. 1, s. 13
35-36 Elizabeth II

Assent
March 25, 1987

Highlights
exemption from
infringement

Short Title
National Archives of Canada Act

28. 1987

An Act respecting the National Archives of Canada and records of government institutions of Canada and to amend other Acts in relation thereto

R.S. 1985 (1987), c. 1(3rd Supp.), s. 13

Assent
March 25, 1987

Highlights
exemption from
infringement

Short Title
National Archives of Canada Act

29. 1987

An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequences thereof

S.C. 1987, c. 49, ss. 118-119
35-36 Elizabeth II

Assent
December 17, 1987

Highlights
notice required of
intention to import
copies into Canada

Short Title
Customs Tariff

30. 1987

An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized

Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequences thereof

R.S. 1985 (1987), c. 41 (3rd Supp.), ss. 116-117

Assent
December 17, 1987

Highlights
notice required of
intention to import
copies into Canada

Short Title
Customs Tariff

31. 1987

Bill C-60: An Act to amend the Copyright Act and to amend other Acts in consequence thereof
Second Session, 33rd Parliament

First Reading, May 27, 1987
35-36 Elizabeth II

Assent
n.a.

Highlights
draft amendments to
the *Copyright Act*

Citation Reference
Bill C-60 1987

32. 1988

An Act to amend the Copyright Act and to amend other Acts in consequence thereof

S.C. 1988, c. 15
35-36-37 Elizabeth II

Assent
June 8, 1988

Highlights
s.1(3) - introduce definition of
Copyright Board, choreographic
work, computer program
and moral rights
s. 2 - introduction of public
exhibition right
s. 4 - Moral Rights
s. 9 - Time limit for actions
s. 11 - amendment to copyright
relative to Industrial Design
s. 12 - revision of Copyright Board and
Collective Administration
of Performing Rights
s. 14 - Collective Administration
of Copyright

Short Title
none

33. 1988

An Act to amend the Copyright Act and to amend other Acts in consequence thereof

R.S. 1985 (1988), c. 10 (4th Supp.)

Assent
June 8, 1988

Highlights
s.1(3) - introduce definition of
Copyright Board, choreographic
work, computer program
and moral rights
s. 2 - introduction of public
exhibition right
s. 4 - Moral Rights
s. 9 - Time limit for actions
s. 11 - amendment to copyright
relative to Industrial Design
s. 12 - revision of Copyright Board and
Collective Administration
of Performing Rights
s. 14 - Collective Administration
of Copyright

Short Title
none

34. 1988

An Act to implement the Free Trade Agreement between Canada and the United States of America

S.C. 1988, c. 65, ss. 61-64

37 Elizabeth II

Assent

December 30, 1988

Highlights

s. 61 - introduce definition of telecommunications
s. 63 - introduction of retransmission rights

Short Title

Canada-United States Free Trade Agreement Implementation Act

35. 1990

An Act to provide for the protection of integrated circuit topographies and to amend certain Acts in consequence thereof

S.C. 1990, c. 37, s. 33

38-39 Elizabeth II

Assent

June 27, 1990

Highlights

s. 33 - application to topographies

Short Title

Integrated Circuit Topography Act

36. 1992

An Act to correct certain anomalies, inconsistencies, archaisms and errors in the Statutes of Canada, to deal with other matters of a non-controversial and uncomplicated nature therein and to repeal certain provisions thereof that have expired or lapsed or otherwise ceased to have effect

S.C. 1992, c. 1, ss. 47-52

40-41 Elizabeth II

Assent

February 28, 1992

Highlights

amendment to voluntary registration of copyrights

Short Title

Miscellaneous Statute Law Amendment Act, 1991

37. 1992

Bill C-93: An Act to implement certain government organization provisions of the budget tabled in the House of Commons on February 25, 1992

3rd Session, 34th Parliament

First Reading, February 25, 1992

40-41 Elizabeth II

Assent

n.a.

Highlights

draft amendments to Act which died on the Order Paper
s. 125 - proposed Intellectual Property Tribunal

Short Title

Budget Implementation (Government Organizations) Act, 1992

Citation Reference

Bill C-93 1992

38. 1993

An Act to amend the Copyright Act, the Industrial Design Act, the Integrated Circuit Topography Act, the Patent Act, the Trade-marks Act and other Acts in consequence thereof

S.C. 1993, c. 15, ss. 2-11

40-41-42 Elizabeth II

Assent

May 6, 1993

Highlights

s. 2 - Universal Copyright Convention
s. 9 - Substituted Rights

Short Title

Intellectual Property Law Improvement Act

39. 1993

An Act to amend the Copyright Act

S.C. 1993, c. 23

40-41-42 Elizabeth II

Assent

May 6, 1993

Highlights

s. 1(2) - introduce definition of "receiving device"
s. 2 - Networks, programming undertakings
s. 3 - Performance and communication rights

Short Title

none

40. 1993

An Act to implement the North American Free Trade Agreement

S.C. 1993, c. 44, ss. 53-80

40-41-42 Elizabeth II

Assent

June 23, 1991

Highlights

s. 53(3) - introduce definitions of architectural work
Berne Convention
country, compilation
maker of cinematograph and recording
s. 54 - introduce definition of compilation
s. 55(3) - rental of computer programs
s. 56 - definition of "publication"

Short Title

North American Free Trade Agreement Implementation Act

41. 1993

Bill C-88: An Act to amend the Copyright Act

3rd Session, 34th Parliament

First Reading

40-41-42 Elizabeth II

Assent

n.a.

Highlights

only 1st Reading
amendments to various definitions
and performance and communication rights

Short Title

none

Citation Reference in Work

Bill C-88 1993

42. 1994

An Act to implement the Agreement Establishing the World Trade Organization

S.C. 1994, c. 47, ss. 56-69

42-43 Elizabeth II

Assent	Highlights
December 15, 1994	s. 56(3) - introduce definition of a performer's performance
	s. 58 - Performers' Rights
s. 61 - Compensation for Restoration of Copyright or Moral Rights	
s. 65 - Importation of Copies, Fixations and Reproductions	
s. 68 - Compensation for Restoration of Copyright or Performer's Right	

Short Title

World Trade Organization Agreement Implementation Act

43. 1995

An Act to establish the Department of Industry and to amend and repeal certain other Acts

S.C. 1995, c. 1, ss. 4(1)(h) & 43

42-43-44 Elizabeth II

Assent	Highlights
March 16, 1995	Department of Industry established and Minister responsible for <i>Copyright Act</i>

Short Title

Department of Industry Act

44. 1996

Bill C-32, An Act to Amend the Copyright Act

2nd Session, 35th Parliament

First Reading, House of Commons Canada

45 Elizabeth II

Assent	Highlights
pending	proposed amendments to the Copyright Act
	s. 50 - Private Copying and Levy on blank audio recording media
	in effect, replace concept of "fair dealing" by concept of "fair use"

Short Title

none

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* no major heading in Act

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REDUNDANT, TRANSITIONAL & UNASSIGNED PROVISIONS BY STATUTE OR BILL

S.C. 1921, c. 24	177
S.C. 1923, c. 10	177
R.S. 1927, c. C-32	177
S.C. 1931, c. 8	177
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R.S. 1985 (1984), c. 10 (1st Supp.)	178
R.S. 1985 (1988), c. 10 (1st Supp.)	178
S.C. 1988, c. 15, s. 15 & R.S. 1985 (1988), c. 10 (4th Supp.)	178
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S.C. 1993, c. 23 & Bill C-88 1993	180
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SHORT TITLE

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, c. C-30;
R.S. 1985, c. C-42

1. Short Title

This Act may be cited as

[The Copyright Act, 1921.] ^I

[the Copyright Act, 1921. c. 24, s. 1.] ^{II}

[the Copyright Act. R.S., c. 32, s. 1.] ^{III}

[the Copyright Act. R.S., c. 55, s. 1.] ^{IV}

the *Copyright Act. R.S., c. C-30, s. 1.*

S.C. 1921, c. 24, s.1 ^I;
R.S. 1927, c. C-32, s.1 ^{II};
R.S. 1952, c. C-55, s.1 ^{III};
R.S. 1970, c. C-30, s.1 ^{IV};
R.S. 1985, c. C-42, s.1

INTERPRETATION

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, c. C-30;
R.S. 1985, c. C-42

2. Definitions {not numbered in Act}

In this Act, [unless the context otherwise requires,] ^I

S.C. 1921, c. 24, s.2 ^I;
R.S. 1927, c. C-32 ^I;
R.S. 1952, c. C-55;
R.S. 1970, c. C-30;
R.S. 1985, c. C-42

2.1 ["architectural work of art"] ^{I II}

"architectural work"

means any building or structure or any model of a building or structure;

S.C. 1988, c. 15, s. 1(1) ^I;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 1 ^{II};
S.C. 1993, c. 44, s. 53(3)

1921-1988

"architectural work of art"

means any building or structure having an artistic character or design, in respect of [such] ^{I II III IV} that character or design, or any model for [such] ^{I II III IV} the building or structure, [provided that the] ^{I II} but the protection afforded by this Act [shall be] ^I ^{II} is confined to the artistic character and design, and [shall not] ^{I II} does not extend to processes or methods of construction;

S.C. 1921, c. 24, s. 2(a) ^I;
R.S. 1927, c. C-32, s. 2 (a) ^{II};
R.S. 1952, c. C-55, s. 2(a) ^{III};
R.S. 1970, c. C-30, s. 2 ^{IV};
R.S. 1985, c. C-42, s. 2

1987

The definition "architectural work of art"... in section 2 of the *Copyright Act* (is) repealed and the following substituted therefor:

"architectural work of art" means any building or any model of a building.

Bill C-60 1987, s. 1(1)

2.2 "artistic work"

includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, and compilations of artistic works;

S.C. 1993, c. 44, s. 53(2)

1988-1993

"artistic work"

includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship and architectural works of art ;

Bill C-60 1987, 1(1);

S.C. 1988, c. 15, s. 1(1);

R.S. 1985 (1988), c. 10 (4th Supp.), s. 1

1921-1988

"artistic work"

includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

S.C. 1921, c. 24, s. 2(b);

R.S. 1927, c. C-32, s. 2(b);

R.S. 1952, c. C-55, s. 2(b);

R.S., 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1986

The government accepts these recommendations.

GRCRC 21,29, p.4, p.6

1985

Maps, charts and plans should be treated as artistic works.

CRC 21 p 17

Consideration should be given to a new designation of "artistic works" in general and to "engravings" in particular.

CRC 29 p.24

2.3 "Berne Convention country"

means a country that is a party to the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, or any one of its revisions, including the Paris Act of 1971;

S C 1993, c. 44, s. 53(3)

S. 2 INTERPRETATION

2.4 "Board"

means the Copyright Board established by subsection [48(1)] ^I 66(1);

Bill C-60 1987, 1(3) ^I;

S.C. 1988, c. 15, s. 1(3) ^I;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 1(3)

1992

125.(1) The definition "Board" in section 2 of the Copyright Act is repealed.

125.(2) Section 2 of the said Act is further amended by adding thereto, in alphabetical order, the following definition

"Tribunal" means the Intellectual Property Tribunal established by section 3 of the Intellectual Property Tribunal Act.

Bill C-93 1992

2.5 "book"

[shall include] ^I includes every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart or plan separately published;

S.C. 1921, c. 24, s. 2(c) ^I;

R.S. 1927, c. C-32, s. 2(c) ^I;

R.S. 1952, c. C-55, s. 2(c);

R.S. 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1996

"book"

means a volume or a part or division of a volume, in printed form, but does not include

(a) a pamphlet,

(b) a newspaper, review, magazine or other periodical,

(c) a map, chart, plan or sheet music where the map, chart, plan or sheet music is separately published, and

(d) an instruction or repair manual that accompanies a product or that is supplied as an accessory to a service;

Bill C-32 1996, s. 1(2)

2.6 "choreographic work"

includes any work of choreography, whether or not it has any story line;

Bill C-60 1987, 1(3) ^I;

S.C. 1988, c. 15, s. 1(3);

R.S. 1985 (1988), c. 10 (4th Supp.), s. 1(3)

2.7 "cinematograph"

includes any work [produced by] ^{I I I I V} expressed by any process analogous to cinematography [;] ^{I I I I I I I I V} end [but, in section 11.1 excludes works where the

arrangement or acting form or the combination of incidents represented give the work an original character;] ^{VI}

S.C. 1921, c. 24, s. 2(d) ^I;

R.S. 1927, c. C-32, s. 2(d) ^{II};

R.S. 1952, c. C-55, s. 2(d) ^{III};

R.S. 1970, c. C-30, s. 2 ^{IV};

R.S. 1985, c. C-42, s. 2 ^V;

S.C. 1993, c. 44, s. 53(2) ^{VI}

1996

"cinematographic work"

includes any work expressed by any process analogous to cinematography;

Bill C-32 1996, s. 1(2)

1984

The term "cinematography" and "processes analogous to cinematography" will be defined broadly to include any means by which such works are produced, irrespective of the technological process utilized, e.g. videotape and videodisc;

GT, p.10

2.8 "collective work"

means

(a) an encyclopedia, dictionary, year book or similar work,

(b) a newspaper, review, magazine or similar periodical, and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

S.C. 1921, c. 24, s. 2(e);

R.S. 1927, c. C-32, s. 2(e);

R.S. 1952, c. C-55, s. 2(e);

R.S. 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1984

The new Act will include a definition of collective work that sets out a general set of criteria, followed by an illustrative list of examples.

GT, p.32

Revised definition of collective works will provide for copyright protection regardless of the class of underlying works;

GT, p.33

2.9 "compilation"

means

a) a work resulting from the selection or arrangement of literary, dramatic, musical or artistic works or parts thereof, or

b) a work resulting from the selection or arrangement of data;

S.C. 1993, c. 44, s. 53(3)

2.10 "computer program"

means a set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer in order to bring about a specific result;

S.C. 1988, c. 15, s. 1(3);

R.S. 1985 (1988), c. 10 (4th Supp.), s. 1(3)

1987

Section 2 of the said Act is further amended by adding thereto... the following definition:

"computer program" means a set of instructions that is expressed, fixed, embodied or stored in any manner, and that can be used directly or indirectly in a computer in order to bring about a specific result.

Bill C-60, 1987, s. 1(3), p. 2

1984

Computer program will be defined in a manner such as "a set of operating instructions intended to operate a machine having information processing capabilities;

"Computer program in machine readable form" will be defined in a manner such as a computer program that is not intended for human comprehension but will include any instructions intended to make the program compatible with a particular machine or type of machine.

GT, p.81

2.11 "delivery"

in relation to a lecture, includes delivery by means of any mechanical instrument;

S.C. 1921, c. 24, s. 2(f);

R.S. 1927, c. C-32, s. 2(f);

R.S. 1952, c. C-55, s. 2(f);

R.S. 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1996

The definition(s) "delivery" ... in section 2 of the *Copyright Act* are (is) repealed.

Bill C-32 1996, s. 1(1)

2.12 "dramatic work"

includes

a) any piece of recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise,

b) any cinematograph, and

c) any compilation of dramatic works;

S.C. 1993, c. 44, s. 53(2)

1921-1993

"dramatic work"

includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

S.C. 1921, c. 24, s. 2(g);

R.S. 1927, c. C-32, s. 2(g);

R.S. 1952, c. C-55, s. 2(g);

R.S. 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1996

Paragraph (b) of the definition "dramatic work" in section 2 of the English version of the Act is replaced by the following:

(b) any cinematographic work, and

Bill C-32 1996, s.1(4)

2.13 "engravings"

include etchings, lithographs, woodcuts, prints and other similar works, not being photographs;

S.C. 1921, c. 24, s. 2(h);

R.S. 1927, c. C-32, s. 2(h);

R.S. 1952, c. C-55, s. 2(h);

R.S. 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1986

The government accepts these recommendations.

GRCRC 29, p.6

1985

Consideration should be given to a new designation of "artistic works" in general and to "engravings" in particular.

CRC 29, p.24

2.14 "every original literary, dramatic, musical and artistic work"

includes every original production in the literary, scientific, or artistic domain, whatever may be the mode or form of its expression, such as compilations, books, pamphlets and other writings, lectures, dramatic or dramatico-musical works, musical works, translations, illustrations, sketches and plastic works relative to geography, topography, architecture or science;

S.C. 1993, c. 44, s. 53(2)

S. 2 INTERPRETATION

1931-1993

["literary, dramatic, musical and artistic work"]^I
"every original literary, dramatic, musical
and artistic work"

["Every original literary, dramatic, musical
and artistic work" shall include]^I includes every
original production in the literary,
scientific, or artistic domain, whatever may
be the mode or form of its expression, such
as books, pamphlets and other writings,
lectures, dramatic or dramatico-musical
works, musical works or compositions with
or without words, illustrations, sketches
and plastic works relative to geography,
topography, architecture or science;

S.C. 1931, c. 8, s. 2(1)(u)^I;
R.S. 1952, c. C-55, s. 2(v)
R.S. 1970, c. C-30, s. 2;
R.S., 1985, c. C-42, s. 2

2.15 [His Majesty's Dominions]^I II **"Her
Majesty's Realms and Territories"**
includes any territories under
[His Majesty's]^I II Her Majesty's protection
to which an order in council made under
[the provisions of section twenty-eight]^I II [the
provisions of section 28]^{III} IV section 28 of the
Copyright Act, 1911, passed by the
Parliament of the United Kingdom,
relates;

S.C. 1921, c. 24, s. 2(i)^I;
R.S. 1927, c. C-32, s. 2(i)^{II};
R.S. 1952, c. C-55, s. 2(i)^{III};
R.S. 1970, c. C-30, s. 2^{IV};
R.S. 1985, c. C-42, s. 2

1996

The definition(s) ... "Her Majesty's
Realms and Territories" ... in section 2 of
the *Copyright Act* are (is) repealed.
Bill C-32, 1996, s. 1(1)

2.16 **"infringing"**
means

(a) when applied to a copy of a work in
which copyright subsists, any copy,
including any colourable imitation,
made or imported in contradiction of this
Act, or

(b) when applied to a fixation of a
performer's performance in respect of
which a performer's right subsists, or to
a reproduction of such a fixation, any
fixation or reproduction made or
imported in contravention of this Act.

S.C. 1994, c. 47, s. 56(1)

1921-1994

"infringing"

when applied to a copy of a work in
which copyright subsists, means any copy,
including any colourable imitation, made or
imported in contravention [of the provisions]^I II
^{III} of this Act;

S.C. 1921, c. 24, s. 2(j)^I;
R.S. 1927, c. C-32, s. 2(j)^{II};
R.S. 1952, c. C-55, s. 2(j)^{III};
R.S. 1970, c. C-30, s. 2;
R.S. 1985, c. C-42, s. 2

1996

"infringing"
means

(a) in relation to a work in which
copyright subsists, any copy, including
any colourable imitation, made or imported
in contravention of this Act,

(b) in relation to a performer's
performance in respect of which copyright
subsists, any fixation or copy of a fixation
of it made or imported in contravention of
this Act,

(c) in relation to a sound recording in
respect of which copyright subsists, any
copy of it made or imported in
contravention of this Act, or

(d) in relation to a communication
signal in respect of which copyright
subsists, any fixation or copy of a fixation
of it made or imported in contravention of
this Act;

Bill C-32 1996, s. 1(2)

1986

The government agrees with this
recommendation in principle.

GRCRC 132, p.18

1985

The definition of what constitutes
copyright infringement should be
reviewed.

CRC 132, p.98

2.17 **"lecture"**

includes address, speech and
sermon;

S.C. 1921, c. 24, s. 2(l);
R.S. 1927, c. C-32, s. 2(l);
R.S. 1952, c. C-55, s. 2(l);
R.S. 1970, c. C-30, s. 2;
R.S. 1985, c. C-42, s. 2

2.18 **"legal representatives"**

includes heirs, executors, admin-
istrators, [successors]^{III} IV V VI and assigns,
[or other legal representatives; and]^I II or agents
or attorneys who are thereunto duly
authorized in writing;

S.C. 1921, c. 24, s. 2(m)^I;
R.S., 1927, c. C-32, s. 2(m)^{II};
S.C. 1931, c. 8, s. 2(2)^{III};
R.S. 1952, c. C-55, s. 2(m)^{IV};
R.S. 1970, c. C-30, s. 2^V;
R.S. 1985, c. C-42, s. 2^{VI}

2.19 "literary work"

includes tables, computer programs, and compilations of literary works;

S.C. 1993, c. 44, s. 53(2)

1988-1993

"literary work"

includes tables, compilations, translations and computer programs;

S.C. 1988, C-15, s. 1(2);

R.S. 1985, c. 10 (4th Supp.), s. 1(2)

1921-1988

"literary work"

includes maps, charts, plans, tables, and compilations;

S.C. 1921, c. 24, s. 2(n);

R.S. 1927, c. C-32, s. 2(n);

R.S. 1952, c. C-55, s. 2(n);

R.S. 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1987

The definition "literary work" in section 2 of the said Act is repealed and the following substituted therefor:

"literary work" includes tables, compilations and computer programs.

Bill C-60 1987, 1(2), p. 1

2.20 "maker"

in relation to

(a) a cinematograph, or

(b) a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced,

means the person by whom the arrangements necessary for the making of the cinematograph or contrivance are undertaken;

S.C. 1993, c. 44, s. 53(3)

1996

"maker"

means

(a) in relation to a cinematographic work, the person by whom the arrangements necessary for the making of the work are undertaken, or

(b) in relation to a sound recording, the person by whom the arrangements necessary for the first fixation of the sounds are undertaken;

Bill C-32 1996, s. 1(2)

2.21 "Minister"

except in section 44.1, means the Minister of Consumer and Corporate Affairs;

S.C. 1993, c. 44, s. 53(2)

1970-1993

"Minister"

means the Minister of Consumer and Corporate Affairs;

S.C. 1970, C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1921-1970

"Minister"

means the Minister of the Crown named by the Governor in Council to administer this Act;

S.C. 1921, c. 24, s. 2(o);

R.S. 1927, c. C-32, s. 2(o);

R.S. 1952, c. C-55, s. 2(o)

2.22 "moral rights"

means the rights described in subsection [12.1(1)]¹ 14.1(1);

S.C. 1988, C-15, s. 1(3)¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 1(3)

1987

Section 2 of the said Act is further amended by adding thereto... the following definition:

"moral rights" means the rights described in subsection 12.1.

Bill C-60 1987, 1(2), p. 2

2.23 "musical work"

means any work of music or musical composition, with or without words, and includes any compilation thereof;

S.C. 1993, c. 44, s. 53(2)

1993

"musical work"

means any work of music or musical composition, with or without words;

S.C. 1993, c.23, s. 1(1)

1921-1993

"musical work"

means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced;

S.C. 1921, c. 24, s. 2(p);

R.S. 1927, c. C-32, s. 2(p);

R.S. 1952, c. C-55, s. 2(p);

R.S. 1970, c. C-30, s. 2;

R.S. 1985, c. C-42, s. 2

1986

The government agrees with this recommendation in principal.

Recommendation 38 will be considered when defining the concept of fixation of a work;

GRCRC 38, p.7

1985

The category of musical work should be defined in an illustrative manner;

CRC 38, p.31

1977

That "musical work" be defined as including words intended by the author(s) to be performed with the music;

CC p 94

S. 2 INTERPRETATION

2.24 "performance"

means any acoustic representation of a work or any visual representation of a dramatic work, including a representation made by means of any mechanical instrument, radio receiving set or television receiving set, [; but this definition does not apply in the expression "performer's performance" or in the definition of that expression;] ^I

S.C. 1993, c. 44, s. 53(2);
S.C. 1994, c. 47, s. 56(1) ^I

1921-1993

"performance"

means any acoustic representation of a work or any visual representation of any dramatic action in a work, including [such] ^I
^{II} a representation made by means of any mechanical instrument [; ^{end}] ^I ^{II} [or by radio communication; ^{end}] ^{III} ^{IV} ^V or receiving device;;

S.C. 1921, c. 24, s. 2(q) ^I;
R.S., 1927, c. C-32, s. 2(q) ^{II};
S.C. 1931, c. 8, s. 2(3) ^{III};
R.S., 1952, c. C-55, s. 2(q) ^{IV};
S.C. 1970, C-30, s. 2 ^V;
R.S., 1985, c. C-42, s. 2 ^{VI};
S.C. 1993, c. 23, s. 1(1)

1996

"performance"

means any acoustic or visual representation of a work, performer's performance, sound recording or communication signal, including a representation made by means of any mechanical instrument, radio receiving set or television receiving set;

Bill C-32 1996, s. 1(2)

1992

"performance"

means any acoustic representation of a work or any visual representation of any dramatic action in a work, including a representation made by means of any mechanical instrument or receiving device.

Bill C-88 1993, s. 1(1)

1986

The government agrees in principle. The suggested definitions will be considered in developing the Act.

GRCRC 48, 49, p.8

1985

The new Act should define the phrase "in public" as regards the right to perform in public so as to include situations where individuals share living quarters by reason of their work, education, vacation or detention.

CRC 48, p.37

Performance in public" should be defined to include those performances effected by means of a video jukebox even when such performances can be viewed only by one person at any given time;

CRC 49, p.38

1984

"Performance will be redefined to reflect technological developments (and) will include public delivery of lectures, and similar works, the public presentation of a work that is broadcast, the playing in public of a record and the public exhibition of a film. Public performance rights will not be granted to sound recordings.

GT, p. 19

2.25 "performer's performance"

means

(a) a live performance of a pre-existing artistic work, pre-existing dramatic work or pre-existing musical work, or a live recitation of a pre-existing literary work, whether or not the work was previously fixed in any material form, and whether or not the work's term of copyright protection under this Act has expired,

(b) a live reading of a pre-existing literary work, whether or not the work's term of copyright protection under this Act has expired, or

(c) a live improvisation of an artistic work, dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work, but the reference to artistic works in paragraphs (a) and (c) shall be read as applicable only in relation to the performer's sole right conferred by paragraph 14.01(1)(c) and the performer's sole right to authorize acts described in paragraph 14.01(1)(c);

S.C. 1994, c. 47, s. 56(3)

1996

"performer's performance"

means any of the following when done by a performer:

(a) a performance of an artistic work, dramatic work or musical work, whether or not the work was previously fixed in any material form, and whether or not the

work's term of copyright protection under this Act has expired,

(b) a recitation or reading of a literary work, whether or not the work's term of copyright protection under this Act has expired, or

(c) an improvisation of a dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work.

Bill C-32 1996, s. 1(2)

2.26 "photograph"

includes photo-lithograph and any work [produced by] ¹ expressed by any process analogous to photography;

S.C. 1921, c. 24, s. 2(r) ¹;
R.S. 1927, c. C-32, s. 2(r) ¹;
R.S. 1952, c. C-55, s. 2(s) ¹;
R.S. 1970, c. C-30, s. 2 ¹;
R.S. 1985, c. C-42, s. 2 ¹;
S.C. 1993, c. 44, s. 53(2)

2.27 "plate"

includes any stereotype or other plate, stone, block, mold, matrix, transfer or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made;

S.C. 1921, c. 24, s. 2(s);
R.S. 1927, c. C-32, s. 2(s);
R.S. 1952, c. C-55, s. 2(r);
R.S. 1970, c. C-30, s. 2;
R.S. 1985, c. C-42, s. 2

1996
"plate"

includes

(a) any stereotype or other plate, stone, block, mold, transfer or negative used or intended to be used for printing or reproducing copies of any work; and

(b) any matrix or other appliance used or intended to be used for making or reproducing sound recordings, performer's performances or communication signals;

Bill C-32- 1996, s. 1(2)

2.28 "receiving device"

means any device that can receive a telecommunication and represent it acoustically, visually or audiovisually;

S.C. 1993, c.23, s. 1(2)

2.29 "telecommunication"

means any transmission of signs, signals, writing, images or sounds or

intelligence of any nature by wire, radio, visual, optical or other electromagnetic system;

S.C. 1988, c. 65, s. 61

2.30 "treaty country"

means a *Berne Convention* country, a UCC country or WTO Member;

S.C. 1994, c. 47, s. 56(3)

2.31 "UCC country"

means a country that is a party to the *Universal Copyright Convention*, adopted on September 6, 1952 in Geneva, Switzerland, or to that Convention as revised in Paris, France on July 24, 1971;

S.C. 1994, c. 47, s. 56(3)

2.32 "work"

[shall include] ¹ includes the title thereof when such title is original and distinctive;

S.C. 1931, c. 8, s. 2(1)(v) ¹;
R.S. 1952, c. C-55, s. 2(u);
R.S. 1970, c. C-30, s. 2;
R.S. 1985, c. C-42, s. 2

2.33 "[a] ¹ work of joint authorship"

[for purposes of this Act, "a work of joint authorship"] ¹ means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

S.C. 1921, c. 24, s. 2(k) ¹;
R.S. 1927, c. C-32, s. 2(k) ¹;
R.S. 1952, c. C-55, s. 2(k) ¹;
S.C. 1970, C-30, s. 2;
R.S. 1985, c. C-42, s. 2

1984

Works of joint authorship will be protected as long as one of the authors qualifies for such protection

GT p.7

Two guiding criteria to be used in defining a work of joint authorship; first, the intention of the parties involved, and second, the interdependency or inseparability of the parties.

GT p.31

To qualify as a work of joint authorship, it should have been the intention of the authors, at the time of creation, that their contribution be merged into inseparable or interdependent parts of a unitary whole... Where there are clearly identifiable and separable works with a joint work, such as with lyrics and

s. 2 INTERPRETATION & Interpretation Not Adopted

music, the creator of each underlying work will have the right to use that work without the permission of the other creator;

GT p.32

2.34 "work of sculpture"

includes casts and models;

S.C. 1921, c. 24, s. 2(t);
R.S. 1927, c. C-32, s. 2(t);
R.S. 1952, c. C-55, s. 2(t);
R.S. 1970, c. C-30, s. 2;
R.S. 1985, c. C-42, s. 2

1996

The definition(s) "work of sculpture" ... in section 2 of the *Copyright Act* are (is) repealed.

Bill C-32 1996, s. 1(1)

"sculpture"

includes a cast or model;

Bill C-32 1996, s. 1(5)

2.35 "WTO Member"

means a Member of the World Trade Organization as defined in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

S.C. 1995, c. 47, s. 56(3)

2.1(1) Compilations

A compilation containing two or more of the categories of literary, dramatic, musical or artistic work shall be deemed to be a compilation of the category making up the most substantive part of the compilation.

S.C. 1993, c. 44, s. 54

2.1 (2) Idem.

The mere fact that a work is included in a compilation does not increase, decrease or otherwise affect the protection conferred by this Act in respect of the copyright in the work or the moral rights in respect of the work.

S.C. 1993, c. 44, s. 54

INTERPRETATION NOT ADOPTED

1. audio-visual works

1986

The government agrees with these recommendations in principle. The suggested definitions will be considered in developing the Act.

GRCRC 40, 47, p.8

1985

Audio-visual works should be defined to include any work in which an image appears to be in motion, with or without sound, on any material support.

CRC 46, p.37

Audio-visual works should be defined to include pre-programmed works where the movement of the picture may be the result of a player's interaction with a computer program.

CRC 47, p.37

2. broadcast

1977

The definition of radio communication be that used in the *Broadcasting Act*.

CC p.53

That the term "broadcast" ... include an origination (diffusion) by a cable system.

CC p. 169

3. broadcaster

1996

means a body that, in the course of operating a broadcasting undertaking, broadcasts a communication signal in accordance with the law of the country in which the broadcasting undertaking is carried on, but excludes a body whose sole activity in relation to communication signals is their retransmission;

Bill C-32 1996, s. 1(5)

4. Canadian sound recording

1977

That a Canadian sound recording" be defined as one where the majority of the elements required to produce the recording are Canadian.

CC p.89

5. collective society

1996

means a society, association or corporation that carries on the business of collective administration of copyright for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration and

(a) operates a licensing scheme, applicable in relation to a repertoire of works, performer's performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster, pursuant to which the society, association or corporation sets out classes of uses that it agrees to authorize under this Act, and the royalties and terms and conditions on which it agrees to authorize those classes of uses, or

(b) carries on the business of collecting and distributing royalties or levies payable pursuant to this Act;

Bill C-32 1996, s. 1(5)

6. commercially available

1996

means, in relation to a work or other subject-matter, available on the Canadian market within a reasonable time and for a reasonable price and that may be located with reasonable effort;

Bill C-32 1996 s 1(5)

7. communication signal

1996

means radio waves transmitted through space without any artificial guide, for reception by the public;

Bill C-32 1996, s. 1(5)

8. copyright

1996

means the rights described in

(a) section 3, in the case of a work,

(b) sections 15 and 26, in the case of a performer's performance,

(c) section 18, in the case of a sound recording, or

(d) section 21, in the case of a communication signal;

Bill C-32 1996, s. 1(5)

9. country

1996

includes any territory;

Bill C-32 1996, s. 1(5)

10. defendant

1996

includes a respondent to an application;

Bill C-32 1996, s. 1(5)

11. educational institution

1996

means

(a) a non-profit institution licensed or recognized by or under an Act of Parliament or the legislature of a province to provide pre-school, elementary, secondary or post secondary education;

(b) a non-profit institution that is directed or controlled by a board of education regulated by or under an Act of the legislature of a province and that provides continuing, professional or vocational education or training,

(c) a department or agency of any level of government, or any non-profit body, that controls or supervises education or training referred to in paragraph (a) or (b), or

(d) any other non-profit institution prescribed by regulation;

Bill C-32 1996, s.1(5)

12. exclusive distributor

1996

means, in relation to a book, a person who

(a) has, before or after the coming into force of this definition, been appointed in writing, by the owner or exclusive licensee of the copyright in the book in Canada, as

(i) the only distributor of the book in Canada or any part of Canada, or

(ii) the only distributor of the book in Canada or any part of Canada in respect of a particular sector of the market, and

(b) meets the criteria established by regulations under section 2.6,

and, for greater certainty, if there are no regulations made under section 2.6, then no person qualifies under this definition as an exclusive distributor"

Bill C-32 1996, s. 1(5)

2.6 Exclusive distributor

The Governor in Council may make regulations establishing criteria for the purpose of paragraph (b) of the definition "exclusive distributor" in section 2.

2.7 Exclusive licence

For the purposes of this Act, an exclusive licence is an authorization from the copyright owner to the licensee, to the exclusion of all others including the copyright owner, to exercise a right that would otherwise be exercisable only by the copyright owner.

Bill C-32 1996, s. 2

13. fair dealing

1986

The government agrees with this recommendation in principle.

GRCRC 82, p.13

1985

The present fair dealing provisions should not be replaced by the "substantially wider fair use" concept.

CRC 82, p.65

1984

The new Act will ... provide both a definition of fair dealing (to be termed "fair use") and a prioritized list of factors to be considered in determining whether a particular use of a work is fair use. "Fair Use" will be defined as a use that does not conflict with the normal exploitation of the work or subject matter and does not unreasonably prejudice the legitimate interests of the copyright owner;

GT p.39

14. fixation

1986

Recommendation 54 will be considered when defining the concept of fixation.

GRCRC 54, p.9

1985

Fixation should be defined as all means capable of capturing a work, including capture in computer media, but excluding capture in a medium as a computer's main storage or display screen.

CRC 54, p.41

1984

The definition of fixation will include any means capable of capturing the work, whether written and notational formats or audio and video recording including the simultaneous recording of works transmitted by broadcast or direct cable transmission;

GT p.6

1977

That the definition of fixation allow for any means capable of capturing the work fixed thereby.

CC p. 42

15. library, archive or museum

1996

means

(a) an institution, whether or not incorporated, that is not established or

s. 2 Interpretation Not Adopted

conducted for profit or that does not form a part of, or is not administered or directly or indirectly controlled by, a body that is established or conducted for profit, in which is held and maintained a collection of documents and other materials that is open to the public or to researchers, or

(b) any other non-profit institution prescribed by regulation;

Bill C-32 1996, s. 1(5)

16. local signal

1986

As for the scope, implementation and operation of the (copyright payment) system, when the new legislation is in place, the government intends to proceed as follows:

1. Local signals, which remain to be defined, will be excluded from the new system;

GRCRC 106, p.15

1985

Local signals should be defined as those reaching the broadcaster's target market by whatever means;

CRC 106, p.82

17. perceptual disability

1996

means a disability that prevents or inhibits a person from reading a literary, musical or dramatic work in its original format, and includes such a disability resulting from

(a) severe or total impairment of sight or the inability to focus or move one's eyes,

(b) the inability to hold or manipulate a book, or

(c) an impairment relating to comprehension;

Bill C-32 1996, s. 1(5)

18. plaintiff

1996

includes an applicant;

Bill C-32 1996, s. 1(5)

19. premises

1996

means, in relation to an educational institution, a place where education or training referred to in the definition "educational institution" is provided, controlled or supervised by the educational institution;

Bill C-32 1996, s. 1(5)

20. qualified person

1984

The *Copyright Act* will protect the works of the following qualified persons":

Individuals

- Canadian nationals
- those domiciled or resident in Canada
- non-nationals whose works require protection under the conventions to which Canada adheres;
- nationals of those countries to which the Copyright Act may be extended from time to time.

Juridical persons :

- bodies incorporated in Canada and

- bodies incorporated in countries signatory to the conventions to which Canada adheres

- bodies incorporated in countries to which the Act may extend from time to time

- organizations to be named from time to time by Order in Council, e.g. the United Nations ;

GT p.6-7

1977

That the protection of the Canadian Act be provided to the following qualified persons":

1. Individuals

a) Canadian nationals;

b) those domiciled or resident in

Canada;

c) non-nationals whose works

require protection under the Conventions to which Canada adheres; and,

d) nationals of those countries to which the Act may from time to time extend.

2. Juridical persons:

a) bodies incorporated in Canada;

b) bodies incorporated in countries signatory to Conventions to which Canada adheres;

c) bodies incorporated in countries to which the Act may from time to time extend;

d) organizations, (e.g. U.N. and specialized agencies) to be named in appropriate orders from time to time.

CC p. 45

21. retransmission

1986

The government agrees with the principles outlined in recommendation ... 100

GRCRC 100, p. 1585

1985

The right of retransmission should be defined in general terms and should not depend on current technology;

CRC 100, p.80

22. Rome Convention country

1996

means a country that is a party to the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, done at Rome on October 26, 1961;

Bill C-32 1996, s. 1(5)

23. sound recording

1996

means a recording, in any material form, consisting exclusively of sounds, whether or not of a performance of a work, but excludes any soundtrack of a cinematographic work that is an integral part of the cinematographic work;

Bill C-32 1996, s. 1(5)

24. transmission right

1985

The government should examine the desirability of bringing all broadcasting and retransmission activities under an expanded definition of a transmission right;

CRC 99, p.80

COPYRIGHT

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

3. (1) ["Copyright" defined] I II III [Copyright] IV Definition of "copyright"

For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form [whatsoever] I II III whatever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public, if the work is unpublished, to publish the work or any substantial part thereof, and [shall include] I II includes the sole right

S.C. 1921, c. 24, s. 3(1) I;
R.S. 1927, c. C-32, s. 3(1) II;
R.S. 1952, c. C-55, s. 3(1) III;
R.S. 1970, c. C-30, s. 3(1) IV;
R.S. 1985, c. C-42, s. 3(1)

1996

3. (1) Copyright in works

For the purposes of this Act, "copyright", in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

Bill C-32 1996, s. 3(1)

1986

The government is strongly in favour of this objective of modernizing the existing Act and keeping it up to date in the future.

GRRC 1, p.2

The government agrees with this recommendation in principle.

GRRC 55, p.9

1985

The *Copyright Act* should be expanded to include new property rights which reflect modern forms of creative activity and the various ways of communicating the fruits of that activity.

CRC 1, p.6

With respect to the right of reproduction, a material form should be one that has a certain degree of permanence.

CRC 55, p.42

1984

The rights provided under the present Act will be regrouped into six broad rights:

- to reproduce;
- to perform in public;
- to publish;
- to adapt;
- to broadcast; and,
- to authorize such activities.

GT p.17

"The right to reproduce" means the right to copy a work or any substantial part of it in any material form including a recording or film.

The new definition of the right will retain the words "any substantial part". What constitutes "any substantive part" is a question of fact to be determined by the courts.

GT p.18

1977

That the legal basis of copyright remain that of property.

CC p.236

That the pecuniary rights of authors in respect of their literary, dramatic, musical and artistic work be reformulated as explicit rights...

That references to the rights attaching to subject matter other than literary, dramatic, musical and artistic works such as motion picture films, sound recordings, be deleted...

That to ensure clarity and certainty, the exclusive rights of authors in literary, dramatic, musical and artistic works be formulated so as to provide that in respect of:

the right to reproduce: it include reproduction of a two dimensional work in three dimensions, or vice versa.

CC p.53

3. (1)(a) to produce, reproduce, perform or publish any translation of the work,

3. (1)(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

3. (1)(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public, or otherwise,

3. (1)(d) in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film or other contrivance by means of which the work may be mechanically performed or delivered,

S.C. 1921, c. 42, s. 3(1)(a-d);
R.S. 1927, c. C-32, s. 3(1)(a-d);
R.S. 1952, c. C-55, s. 3(1)(a-d);
R.S. 1970, c. C-30, s. 3(1)(a-d);
R.S. 1985, c. C-42, s. 3(1)(a-d)

1996

3. (1)(d) in the case of a literary, dramatic or musical work, to make any sound recording or cinematographic recording of the work by means of which the work may be mechanically performed,

Bill C-32 1996, s. 3(2)

3. (1)(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work by cinematograph,

S.C. 1993, c. 44, s. 55(1)

1985-1993

3. (1)(e) subject to subsection (2), in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work by cinematograph, if the author has given the work an original character,

R.S. 1985, c.C-42, s. 3(1)(e)

1985-1993

3. (2) Idem.

Where the author of any work described in paragraph (1)(e) has not given it any original character, the cinematographic production referred to in that paragraph shall be protected as a photograph,

R.S. 1985, c.C-42, s. 3(2)

1931-1985

3. (1)(e) ["Copyright" further defined] ^I

[In] ^I in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present such work by cinematograph, [; provided that the] ^I if the author has given such work an original character; [; and provided that if] ^I but if such original character is absent the cinematographic production shall be protected as a photograph;

S.C. 1931, c. 8, s. 3 ^I;

R.S. 1952, c. C-55, s. 3(1)(e);

R.S. 1970, c.C-30, s. 3(1)(e)

1996

3. (1)(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work by cinematography or by any process analogous to cinematography,

Bill C-32 1996, s. 3(2)

1984

Under the present Act, the right to adapt is explicitly given only to traditional works being adapted to cinematography. However, the same principle applies to the right to convert a dramatic work into a non-dramatic work or vice versa, and the right to "produce, reproduce, perform or publish any translation of the work". The right to adapt will be defined to encompass all the above.

GT p.19

1977

the right to adapt: include the right to make a version in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, newspaper, magazine or similar periodical.

CC p.53

That motion picture films be protected as specific works, whether or not they are of "original character". That the only rights of makers be:

- (a) reproduction, including reproduction of any substantial part;
- (b) performance in public;
- (c) broadcasting;
- (d) adaptation.

CC pp.81-82

3. (1)(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,

S.C. 1988, c. 65, s. 62(1)

1931-1988

3. (1)(f) {In} ^I in case of any literary, dramatic, musical or artistic work, to communicate [such] ^I ^{II} ^{III} the work by radio communication;

S.C. 1931, c. 8, s. 3 ^I;

R.S. 1952, c. C-55, s. 3(1)(f) ^{II};

R.S. 1970, c.C-30, s. 3(1)(f) ^{III};

R.S. 1985, c.C-42, s. 3(1)(f)

3. (1)(g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan, and

S.C. 1993, c. 44, s. 55(2)

1988-1993

3. (1)(g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after the coming into force of this paragraph, other than a map, chart or plan or cinematographic production that is projected as a photograph,

S.C. 1988, c. 15, s. 2;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 2

1996

Subsection 3(1) of the Act is amended by striking out the word "and" at the end of paragraph (g), by adding the word "and" at the end of paragraph (h)...

Bill C-32 1996, s. 3(3)

1987

Subsection 3(1) of the said Act is amended by adding thereto, immediately after paragraph (f) thereof, the following paragraph: "

(g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after the coming into force of this paragraph

Bill C-60, 1987, s. 2, p.2

1986

The government agrees in principle with this recommendation.

GRCRC 34, p.6

1985

The revised law should recognize a right to exhibit the original of an artistic

work in public. The right should also extend to artistic works which are part of limited editions.

CRC 34, p.28

1984

Payment for exhibition of artistic works will continue to be governed strictly by private contract and will not be required by the *Copyright Act*.

GT p.23

1977

That any new Act provide for a specific right to exhibit an artistic work in public.

CC p.53

3. (1)(h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program.

S.C. 1993, c. 44, s. 55(2)

3. (1) and to authorize [any such acts as aforesaid.]¹ any such act.

S.C. 1921, c. 24, s. 3(1)¹;

R.S. 1927, c. C-32, s. 3(1)¹;

R.S. 1952, c. C-55, s. 3(1)¹;

R.S. 1970, c. C-30, s. 3(1)¹;

R.S. 1985, c. C-42, s. 3(1)

1986

The government agrees with this recommendation in principle.

GRCRC 52, p.9

The issue of the right of display mentioned in recommendation 53 will be studied in further detail.

GRCRC 53, p.9

1985

A new right to input any protected work into a computer should be provided in the revised law.

CRC 52, p.41

There should be no right of display (on a computer screen) in the revised law.

CRC 53, p.41

1984

Authorization to make reproductions or other protected uses of the copyright material will be required at the input stage.

GT p.11

One of the rights attaching to computer programs in human-readable form will be the right to authorize a computer program in machine-readable form based upon it...

Computer program copyright means the right:

(a) to publish the machine-readable program if it is unpublished;

(b) to make another machine-readable program that is based upon and identical or substantially similar to the protected machine-readable program;

(c) to make a human-readable program that is based upon and identical or substantially similar to the machine-readable program.

Computer program copyright does not include:

- a moral right;
- a public performance right;
- a broadcast or cable transmission right;
- a right of market segregation (import restrictions);
- a rental right;
- a right to use to use the program

GT p.82

1977

That computer programs *per se* not be protected by copyright. That where they fall under existing categories of protected material, computer programs embodied in that material be accorded the protection attached to those categories.

CC p.111

3. (1.1) Simultaneous fixing

A work that is communicated in the manner described in paragraph (1)(f) is fixed even if it is fixed simultaneously with its communication.

S.C. 1988, c. 65, s. 62(2)

3. (1.2) Interpretation

For purposes of paragraph (1)(f), persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public and a communication intended to be received exclusively by such persons is a communication to the public.

S.C. 1988, c. 65, s. 62(2)

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32 1996, s. 3(4)

2.4 (1) Communication to the public by telecommunication

(a) persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public, and a communication intended to be received exclusively by such persons is a communication to the public;

Bill C-32 1996, s. 2

1986

The government agrees with these recommendations in principle. The suggested definitions will be considered when developing the Act.

GRCRC 48, 49, p.8

1985

The new Act should define the phrase "in public" as regards the right to perform in public so as to include situations where individuals share living quarters by reason of their work, education, vacation or detention.

CRC 48, p.37

3. (1.3) Restriction

For purposes of paragraph (1)(f), a person whose only act in respect of the communication of a work to the public

consists of providing the means of telecommunications necessary for another person to so communicate the work does not communicate that work to the public.

S.C. 1988, c. 65, s. 62(2)

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32 1996, s. 3(4)

2.4 (1) Communication to the public by telecommunication

(b) a person whose only act in respect of communication of a work or other subject-matter to the public consists of providing the means of telecommunication necessary for another person to so communicate the work or other subject-matter does not communicate that work or other subject-matter to the public; and

Bill C-32 1996, s. 2

3. (1.4) Networks, programming undertakings

For purposes of paragraph (1)(f), where a person, as part of,

(a) a network, within the meaning of the *Broadcasting Act*, whose operations result in the communication of works to the public, or

(b) any programming undertaking whose operations result in the communication of works to the public,

transmits by telecommunication a work that is communicated to the public by another person who is not a retransmitter of a signal within the meaning of subsection 28.01(1), the transmission and communication of the work by those persons constitute a single communication to the public for which those persons are jointly and severally liable.

S.C. 1993, c. 23, s. 2

1988-1993

3.(1.4) Networks

For the purpose of paragraph (1)(f), where a person, as part of a network whose object is to communicate works to the public, transmits by telecommunication a work that is communicated to the public by another person, the transmission and communication of the work by those persons constitute a single communication to the public for which those persons are jointly and severally liable.

S.C. 1988, c. 65, s. 62(2)

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32, 1996, s. 3(4)

2.4 (1) Communication to the public by telecommunication

For purposes of communication to the public by telecommunication,

(c) where a person, as part of

(i) a network, within the meaning of the *Broadcasting Act*, whose operations result in the communication of works or other subject-matter to the public, or

(ii) any programming undertaking whose operations result in the communication of works or other subject-matter to the public,

transmits by telecommunication a work or other subject-matter that is communicated to the public by another person who is not a transmitter of a signal within the meaning of subsection 31(1), the transmission and communication of that work or other subject-matter by those persons constitute a single communication to the public for which those persons are jointly and severally liable.

Bill C-32 1996, s. 2

3. (1.41) Regulations

The Governor in Council may make regulations defining "programming undertaking" for purposes of subsection (1.4).

S.C. 1993, c. 23, s. 2

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32, 1996, s. 3(4)

2.4 (1) (2) Regulations

The Governor in Council may make regulations defining "programming undertaking" for the purpose of paragraph (1)(c).

Bill C-32 1996, s. 2

3. (1.5) Exception

A work is not communicated in the manner described in paragraph (1)(f) or subsection (1.4) where a signal carrying the work is retransmitted to a person who is a retransmitter to whom section 28.01 applies.

S.C. 1988, c. 65, s. 62(2)

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32 1996, s. 3(4)

2.4 (1) (3) Exception

A work is not communicated in the manner described in paragraph (1)(c) or 3(1)(f) where a signal carrying the work is retransmitted to a person who is a retransmitter to whom section 31 applies.

Bill C-32 1996, s. 2

3. (2) Rental of computer program

For purposes of paragraph 1(h), an arrangement, whatever its form, constitutes a rental of a computer program if, and only if,

(a) it is in substance a rental, having regard to all circumstances; and

(b) it is entered into with motive of gain in relation to the overall operations of the person who rents out the computer program.

S.C. 1993, c. 44, s. 55(3)

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32, 1996, s. 3(4)

2.5(1) What constitutes rental

For the purposes of paragraphs 3(1)(h) and (i), 15(1)(c) and 18(1)(c), an arrangement, whatever its form, constitutes a rental of a computer program or sound recording if, and only if,

(a) it is in substance a rental, having regard to all the circumstances; and

(b) it is entered into with motive of gain in relation to the overall operations of the person who rents the computer program or sound recording, as the case may be.

2.5(2) Motive of gain

For the purposes of paragraph (1)(b), a person who rents out a computer program or sound recording with the intention of recovering no more than the costs, including overhead, associated with the rental operations does not by that act alone have a motive of gain in relation to the rental operations.

Bill C-32 1996, s. 2

1986

The government recognizes the merit of the Sub-committee's objective to compensate creators but will have to examine the best way to implement it.

GRCRC 92, p.14

1985

A new renting right attaching to all categories of protected subject matter should be provided in the revised law.

CRC 92, p.73

1984

The new Act will provide a renting right that is limited to the commercial renting of sound recordings, films, and videotapes. The Act will also contain certain provisions allowing the Governor in Council to extend this right to other types of works.

GT p 20

3. (3) Idem.

For purposes of paragraph (2)(b), a person who rents out a computer program with the intention of recovering no more than the costs, including overhead, associated with the rental

operations does not by that act alone have a motive of gain in relation to the rental operations.

S.C. 1993, c. 44, s. 55(3)

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32, 1996, s. 3(4)

3. (4) Telecommunication to the public

For purposes of subsection (1), the act of communicating a work to the public by telecommunication does not constitute the act of performing or delivering the work in public, nor does it constitute an authorization to do the act of performing or delivering the work in public.

S.C. 1993, c. 44, s. 55(3)

1996

Subsections 3(1.2) to (4) of the Act are repealed.

Bill C-32 1996, s. 3(4)

2.3 Telecommunication

A person who communicates a work or other subject-matter to the public by telecommunication does not by that act alone perform it in public, nor by that act alone is deemed to authorize its performance in public

Bill C-32 1996, s. 2

RIGHT NOT ADOPTED

1. Authorization

1986

The government agrees with these recommendations in principle.

GRCRC 76, 77, p.12

However, recommendation 5 will not extend to works for which a blanket licence has been granted by a collective society of copyright owners so as not to oblige users to obtain a second authorization for works that such societies have been assigned to administer.

GRCRC 77, p.12

1985

The new Act should provide a moral right to authorize the use of any protected work in association with products, services, causes or institutions.

CRC 5, p.8

1984

Presently, it is an infringement to improperly authorize the exercise of any of a copyright owner's exclusive rights. This right will be retained.

GT p 19

1977

... that it mean the right to authorize the exercising of any of the rights reserved to authors.

CC p 53

s. 3 COPYRIGHT - Right Not Adopted

2. Broadcast

1996

Rights of Broadcasters

21. (1) Copyright in communication signals
Subject to subsection (2), a broadcaster has a copyright in the communication signals that it broadcasts, consisting of the sole right to do the following in relation to the communication signal or any substantial part thereof:

- (a) to fix it;
 - (b) to reproduce any fixation of it that was made without the broadcaster's consent;
 - (c) to authorize another broadcaster to retransmit it to the public simultaneously with its broadcast, and
 - (d) in the case of a television communication signal, to perform it in a place open to the public on payment of an entrance fee,
- and to authorize any act described in paragraph (a), (b) or (d).

21.(2) Conditions for copyright

Subsection (1) applies only if the broadcaster

(a) at the time of the broadcast, had its headquarters in Canada, in a country that is a WTO member or in a Rome Convention country; and

(b) broadcasts the communication signal from that country.

21.(3) Exception

Notwithstanding subsection (2), if the Minister is of the opinion that a Rome Convention country or a country that is a WTO Member does not grant the right mentioned in paragraph (1)(d), the Minister may, by a statement published in the *Canada Gazette*, declare that broadcasters that have their headquarters in that country are not entitled to that right.

Bill C-32 1996, s. 14

1986

The government agrees in principle with this recommendation.

GRCRC 76, 77, p.12

The conditions and mechanism for extending the rights granted under the Act to foreign broadcasters, as suggested in recommendation 77, will be defined in the new Act

GRCRC 77, p.12

1985

The rights attaching to broadcasts should be:

- (a) a right of reproduction;
- (b) a right of transmission;
- (c) a right to authorize each of the above; and
- (d) a right of retransmission.

CRC 76, p.58

The rights should be provided to foreign broadcasters on the basis of reciprocity.

CRC 77, p.59

1984

These communications methods fall into two broad categories: transmission and retransmission.

Transmission refers to a communication of a work from one place to a number of persons.

Retransmission refers to retransmitting the same signal by a different means.

Terrestrial broadcasting, cable origination, and primary transmission from satellites fall into the first category. Copyright owners will be provided with the necessary rights to control and exploit all such transmission activities. However,... sound recordings will not be granted a broadcast right.

GT p.19

1977

... the definition of radiocommunication to be that used in the *Broadcasting Act*...

CC p.53

The term "broadcast" ... include an origination (diffusion) by a cable system.

CC p.69

3. Domaine Public Payant

1977

That no provision be made for domaine public payant in any new *Copyright Act*.

CC p.125

4. Droit de Suite

1986

The government agrees in principle with this recommendation.

GRCRC 35, p.6

1985

Droit de suite should not be introduced at this time into the new Act. Ongoing study should be undertaken to evaluate fully the implications of the right.

CRC 35, p.29

1984

The government is of the opinion that difficulties inherent in the effective exercise of such a right would outweigh the benefits which would accrue to visual artists. Nevertheless, the government would welcome further debate and public comment on the principle and the details of exercising such a right.

GT p.22

1977

That *droit de suite* not be provided in any new *Copyright Act*.

CC p.124

5. Neighbouring Rights

1977

That Canada not accede to the Neighbouring Rights Conventions in the absence of any evidence that it would be in Canada's interest to do so.

CC p.229

6. Public Lending Right

1986

The government agrees in principle with this recommendation.

GRCRC 23, p. 5

1985

A mechanism should be developed to compensate authors for the public lending of their works by libraries. The scheme should be independent of copyright law.

CRC 23, p.20

1984

If an exclusive right to lend were adopted Canada's international copyright treaty obligations would

require payments to non-Canadian copyright holders.

Canadian copyright owners would not receive royalties in other countries even if Canada instituted the right. To avoid these negative effects the copyright method of compensation will not be adopted.

GT p.21

1977

That a PLR not be provided in a revised *Copyright Act*.

CC p.123

7. Rental Right

1996

3.(3) Subsection 3(1) of the Act is amended by striking out the word "and" at the end of paragraph (g), by adding the word "and" at the end of paragraph (h) and adding the following paragraph after paragraph (h):

(i) in the case of a musical work, to rent out a sound recording in which the work is embodied.

Bill C-32 1996, s. 3(3)

2.5 (2) Motive of gain

For the purpose of paragraph (1)(b), a person who rents out a computer program or sound recording with the intention of recovering no more than the costs, including overhead, associated with the rental operations ones not by that act alone have a motive of gain in relation to the rental operation.

Bill C-32 1996, s. 2

1986

The government recognizes the merit of the Sub-Committee's objective to compensate creators but will have to examine the best way to implement it.

GRCRC 92, p.14

1985

A new renting right attaching to all categories of protected subject matter should be provided in the revised law.

CRC 92, p.73

1984

The new Act will provide a renting right that is limited to the commercial renting of sound recordings, films and videotapes. The Act will also contain certain provisions allowing the Governor in Council to extend this right to other types of work.

GT p.20

8. Reprography

1986

The government agrees in principle with this recommendation.

GRCRC 24, p.5

1985

A specific right of reprographic reproduction should not be introduced.

CRC 24, p.21

9. Performance in Public

1985

"Performance in public" should be defined to include those performances effected by means of a video jukebox even where such performances can be viewed only by one person at any given time:

CRC 49, p.38

1984

The meaning of the phrase... "in public" is considered a question of fact.

(It) will not be defined in the new Act. However, the word "performance" will be redefined to reflect technological developments (and) will include public delivery of lectures and similar works, the public presentation of a work that is broadcast, the playing in public of a record and the public exhibition of a film. Public performance rights will not be granted to sound recordings .

GT p.19

1977

the right to perform in public:

it include delivery in the case of lectures and similar works; and the representation of a work by the operation of wireless telegraph apparatus, exhibition of a film, playing a record or by any other means.

CC p.53

10. Sound Recordings

1996

Rights of Sound Recording Makers

18. (1) Copyright in sound recordings

Subject to subsection (2), the maker of a sound recording has a copyright in the sound recording, consisting of the sole right to do the following in relation to the sound recording or any substantial part thereof:

- (a) to publish it for the first time,
- (b) to reproduce it in any material form, and
- (c) to rent it out,

and to authorize any such acts.

18. (2) Conditions for copyright

Subsection (1) applies only if

(a) the maker of the sound recording was a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, or a citizen or permanent resident of a Berne Convention country, a Rome Convention country or a country that is a WTO Member, or, if a corporation, had its headquarters in one of the foregoing countries,

- i - at the date of first fixation, or
- ii - if that first fixation was extended over a considerable period, during any substantial part of the period, or

(b) the first publication of the sound recording in such a quantity as to satisfy the reasonable demands of the public occurred in any country referred to in paragraph (a).

18. (3) Publication

The first publication is deemed to have occurred in a country referred to in paragraph (2)(a) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.

Bill C-32 1996, s. 14

Provisions Applicable to Both Performers and Sound Recording Makers

19. (1) Right to remuneration

Where a sound recording has been published, the performer and maker are entitled, subject to section 20, to be paid equitable remuneration for its performance in public or its communication to the public by telecommunication, except for any retransmission.

19. (2) Royalties

For the purposes of providing the remuneration mentioned in subsection (1),

s. 3 COPYRIGHT - Right Not Adopted

a person who performs a published sound recording in public or communicates it to the public by telecommunication is liable to pay royalties

(a) in the case of a sound recording of a musical work, to the collective society referred to in section 68.2; or

(b) in the case of a sound recording of a literary work or dramatic work, to either maker of the sound recording or the performer.

19. (3) Division of royalties

The royalties, once paid pursuant to paragraph (2)(a) or (b), shall be divided so that

(a) the performer or performers receive in aggregate fifty per cent; and

(b) the maker or makers receive in aggregate fifty per cent.

20. (1) Conditions

The right to remuneration conferred by section 19 applies only if

(a) the maker was, at the date of the first fixation, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, or a citizen or permanent resident of a Rome Convention country, or, if a corporation, had its headquarters in one of the foregoing countries; or

(b) all the fixations done for the sound recording occurred in Canada or in a Rome Convention country.

20. (2) Exception

Notwithstanding subsection (1), if the Minister is of the opinion that a Rome Convention country does not grant a right to remuneration, similar in scope and duration to that provided by section 19, for the performance in public or the communication to the public of a sound recording whose maker, at the date of its first fixation, was a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act* or, if a corporation, had its headquarters in Canada, the Minister may, by a statement published in the *Canada Gazette*, limit the scope and duration of the protection for sound recordings whose first fixation is done by a maker who is a citizen or permanent resident of that country or, if a corporation, has its headquarters in that country.

20. (3) Exception

If so requested by a country that is a party to the North American Free Trade Agreement, the Minister may, by a statement published in the *Canada Gazette*, grant the right to remuneration conferred by section 19 to performers or makers who are nationals of that country and whose sound recordings embody dramatic or literary works.

20. (4) Application of section 19

Where a statement is published under subsection (3), section 19 applies

(a) in respect to nationals of a country mentioned in that statement, as if they were citizens of Canada or, in the case of corporations, had their headquarters in Canada; and

(b) as if the fixation made for the purpose of their sound recordings had been made in Canada.

Bill C-32 1996, s. 14

1986

The government agrees in principle with this recommendation.

Apart from the right of reproduction recognized for sound recording under the present Act, regardless of their national origin the new Act will grant them public performance, transmission and retransmission rights. The conditions and mechanism for extending these new rights to sound recordings of foreign origin as suggested in recommendation 65 will, however, be defined in the Act.

GRCRC 65, p.10

1985

Public performance, transmission and retransmission rights should be extended only to nationals of those foreign countries which provide similar protection to Canadians.

CRC 65, p.51

1984

The meaning of the phrase... "in public" is considered a question of fact. (It) will not be defined in the new Act. However, the word "performance" will be redefined to reflect technological developments (and) will include public delivery of lectures and similar works, the public presentation of a work that is broadcast, the playing in public of a record and the public exhibition of a film. Public performance rights will not be granted to sound recordings.

GT p. 18

Terrestrial broadcasting, cable origination, and primary transmission from satellites fall into the first category. Copyright owners will be provided with the necessary rights to control and exploit all such transmission activities. However,... sound recordings will not be granted a broadcast right.

GT p. 19

The new Act's protection for sound recordings will not include a right to collect a royalty for the public performance or broadcasting of sound recordings.

GT p.21

1977

That, providing it can be satisfactorily demonstrated that mechanisms can be established to exercise the rights, Canadian sound recordings be further protected by an exclusive right to perform in public and an exclusive right to broadcast.

CC p.89

That Canada accede to the Phonogram Convention.

CC p.227

4.(1) Definition of "publication" {no major heading in Act}

For purposes of this Act, "publication" means

(a) in relation to any work, making copies of the work available to the public,

(b) the construction of an architectural work, and

(c) the incorporation of an artistic work into an architectural work, and does not include

(d) the performance in public of a literary, dramatic or musical work,

(e) the delivery in public of a lecture,

(f) the communication of a work to the public by telecommunication, or

(g) the exhibition in public of an artistic work

but for purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works shall not be deemed to be publication of those works.

S.C. 1993, c. 44, s. 56

1921-1993

4.(1) [Meaning of Publication] I II III [Publication] IV Definition of "Publication"

For the purposes of this Act, "publication", in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work or the construction of an architectural work of art, but for the purpose of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of [such]

I II III IV those works.

S.C. 1921, c. 24, s 3(2) I;
R.S. 1927, c. C-32, s. 3(2) II;
R.S. 1952, c. C-55, s. 3(2) III;
R.S., 1970, c. C-30, s 3(2) IV;
R.S. 1985, c. C-42, s 4(1)

1996

Sections 4 of the Act is repealed.
Bill C-32 1996 s 2

2.2(1) Definition of Publication

For the purposes of this Act, "publication" means

(a) in relation to works,

(i) making copies of a work available to the public,

(ii) the construction of an architectural work, and

(iii) the incorporation of an artistic work into an architectural work, and

(b) in relation to sound recordings, making copies of a sound recording available to the public, but does not include

(c) the performance in public, or the communication to the public by telecommunication, of a literary, dramatic or musical work or sound recording, or

(d) the exhibition in public of an artistic work.

2.2(2) Issue of photographs and engravings
For the purpose of subsection (1), the issue of photographs and engravings of sculptures and architectural works is not deemed to be publication of those works.

Bill C-32 1996, s. 2

1986

The government agrees with this recommendation in principle. The suggested definitions will be considered in developing the Act.

GRCRC 48, 50, p. 8

1985

The new Act, in defining "publication", should take into account the various methods of making a work available to the public other than by issuance of copies of that work;

CRC 50, p.39

1984

Since the distinction between published and unpublished works is to be reduced, the definition of publication becomes less important. The current concept of publication (requiring issuance of copies to the public) will be retained and the right to publish will continue to be granted to copyright owners.

GT p.19

1977

That to ensure clarity and certainty, the exclusive rights of authors in literary, dramatic, musical and artistic works be formulated so as to provide that in respect of:

the right to publish: it include making copies of any published work available to the public.

CC p.53

4. (2) When work deemed to be published, etc.

For the purposes of this Act, other than those relating to infringement of copyright, a work shall be deemed to be published or performed in public or communicated to the public by telecommunication, and a lecture

S. 4 DEFINITION OF "PUBLICATION"

shall not be deemed delivered in public, if that act is done without the consent of the owner of the copyright.

S.C. 1993, c. 44, s. 56

1921-1993

4.(2) When work deemed to be published, performed or delivered in public

For the purposes of this Act, other than those relating to infringement of copyright, a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public or delivered in public without the consent or acquiescence of the author, his executors, administrators or assigns.

S.C. 1921, c. 24, s. 3(3);
R.S. 1927, c. C-32, s. 3(3);
R.S. 1952, c. C-55, s. 3(3);
R.S., 1970, c. C-30, s. 3(3);
R.S. 1985, c. C-42, s. 4(2)

1996

Sections 4 of the Act is repealed.

Bill C-32 1996, s. 2

2.2(3) Where no consent of copyright owner

For the purposes of this Act, other than in respect of infringement of copyright, a work or other subject-matter is not deemed to be published or performed in public or communicated to the public by telecommunication if that act is done without the consent of the owner of the copyright.

Bill C-32 1996, s. 2

4. (3) Repealed [When work deemed to be first published - *see current s. 5(1.1)*]

S.C. 1993, c. 44, s. 56

1921-1993

4. (3) [When work deemed to be first published, if issued simultaneously in some other place. When work deemed to be published simultaneously in two places.]
I II III When work deemed to be first published

For the purposes of this Act, a work shall be deemed to be first published within [His Majesty's Dominions] I II [Her Majesty's Dominions] III Her Majesty's Realms and Territories or within a foreign country to which this Act extends, notwithstanding that it has been published simultaneously in some other place, and a work shall be deemed to be published simultaneously in two places, if the time between the publication in one [such] I II III IV place and the other place does not exceed fourteen days or

such longer period as may for the time being be fixed by order in council.

S.C. 1921, c. 24, s. 3(4) I;
R.S. 1927, c. C-32, s. 3(4) II;
R.S. 1952, c. C-55, s. 3(4) III;
R.S., 1970, c. C-30, s. 3(4) IV;
R.S. 1985, c. C-42, s. 4(3)

1977

That simultaneous publication be defined as a subsequent publication occurring within 30 days of the first publication.

CC p.46

4. (4) [Conditions under which copyright complied with in case of unpublished works] I II
III Unpublished work

Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with if the author was, during any substantial part of that period, a British subject [or], I II III IV a subject or citizen of a foreign country to which this Act extends or a resident within [His Majesty's Dominions.] I II [Her Majesty's Dominions.] III Her Majesty's Realms and Territories.

S.C. 1921, c. 24, s. 3(5) I;
R.S. 1927, c. C-32, s. 3(5) II;
R.S. 1952, c. C-55, s. 3(5) III;
R.S. 1970, c. C-30, s. 3(5) IV;
R.S. 1985, c. C-42, s. 4(4)

1996

Sections 4 of the Act is repealed.

Bill C-32 1996, s. 2

2.2(4) Unpublished works

Where, in the case of unpublished work, the making of the work is extended over a considerable period, the conditions of this Act conferring copyright are deemed to have been complied with if the author was during any substantial part of that period a subject or citizen of, or a person ordinarily resident in, a country to which this Act extends.

Bill C-32 1996, s. 2

1977

That the devising of the original of any unpublished material, protected by copyright, presumes devising of the copyright therein, unless a contrary intention is evidenced in the will.

CC p.73

4. (5) When author deemed to be resident

For the purposes [of the provisions] I of this Act [as to] I II III IV with respect to

residence, an author of a work shall be deemed a resident within [His Majesty's Dominions] ^I ^{II} [Her Majesty's Dominions] ^{III} Her Majesty's Realms and Territories if he is domiciled within [His Majesty's Dominions] ^I ^{II} [Her Majesty's Dominions.] ^{III} Her Majesty's Realms and Territories.

S.C. 1921, c. 24, s. 3(6) ^I;
R.S. 1927, c. C-32, s. 3(6) ^{II};
R.S. 1952, c. C-55, s. 3(6) ^{III};
R.S. 1970, c. C-30, s. 3(6) ^{IV};
R.S. 1985, c. C-42, s. 4(5)

1996

Sections 4 of the Act is repealed.

Bill C-32 1996, s. 4.

Definition Not Adopted

1. Cinematograph

1977

That publication, with respect to films, be defined to provide for all manners in which films are in practice made available: by lease, rental, sale or licence.

CC p. 82

2. Computer Program

1984

"Publication" means selling, leasing, licensing, trading, or offering to sell, lease, or trade a machine-readable program.

GT p.83

3. Sound Recording

1996

18. (3) Publication

The first publication is deemed to have occurred in a country referred to in paragraph (2)(a) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.

Bill C-32 1996, s. 14

WORKS IN WHICH COPYRIGHT MAY SUBSIST

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

5. (1) Conditions for subsistence of copyright

Subject to this Act, copyright shall subsist in Canada for the term hereinafter mentioned in every original

literary, dramatic, musical and artistic work, if any one of the following conditions is met:

S.C. 1993, c. 44, s. 57(1)

1921 1993

4. (1) Conditions for obtaining copyright

Subject to [the provisions of] ^I ^{II} ^{III} this Act, copyright shall subsist in Canada for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if the author was at the date of the making of the work a British subject, a citizen or subject of a foreign country [which] ^I ^{II} that has adhered to the Convention and the Additional Protocol thereto set out in [the Second Schedule to this Act] ^I ^{II} [the Second Schedule] ^{III} Schedule II or [a] ^V resident within [His Majesty's Dominions;] ^I ^{II} [Her Majesty's Dominions;] ^{III} Her Majesty's Realms and Territories, and if, in the case of a published work, the work was first published within [His Majesty's Dominions] ^I ^{II} [Her Majesty's Dominions] ^{III} Her Majesty's Realms and Territories or in [such] ^I ^{II} ^{III} ^{IV} that foreign country, but in no other works, except [so far as] ^I ^{II} ^{III} ^{IV} in so far as the protection conferred by this Act is extended as hereinafter provided to foreign countries to which this Act does not extend.

S.C. 1921, c. 24, s. 4(1) ^I;
R.S. 1927, c. C-32, s. 4(1) ^{II};
R.S. 1952, c. C-55, s. 4(1) ^{III};
R.S. 1970, c. C-30, s. 4(1) ^{IV};
R.S. 1985, c. C-42, s. 5(1) ^V

1986

The government agrees in principle with this recommendation.

GRCRC 1, p.2

1985

The *Copyright Act* should be expanded to include new property rights which reflect modern forms of creative activity and the various ways of communicating the fruits of that activity.

CRC 1, p.6

1984

To ensure that the revised *Copyright Act* includes new creations as well as new forms of expression of existing works, the Act will apply to original works defined in accordance with a generic phrase and classified into specific categories of works. Every work coming within the *Copyright Act* will be entitled to protection, regardless of its mode or form of expression and of the means by which it may be reproduced, perceived or communicated. As there is no overriding case to be made for changing these general categories, the four main classes will be retained, but sound recordings and cinematographic works will be treated as separate categories. In addition, the new Act will be drafted in such a way as to ensure that choreography does not require a story line to be protected.

GT pp.9-10

S. 5 WORKS IN WHICH COPYRIGHT MAY SUBSIST

1977

That the general categorization of literary, dramatic, musical and artistic works be retained. That the categories be broadly defined, bearing the following in mind:

(a) 'literary works' should not include maps, charts and plans;

(b) "musical works" should recognize the contemporary nature of these works, and any definition should encompass words associated with the music;

(c) "dramatic works" should not include motion picture film or videotape, but should include choreography;

(d) "artistic works" should be protected irrespective of artistic quality; to include maps, charts and plans; that the definition of photograph include any work expressed by a process analogous to photography.

CC p.48

5. (1) (a) in the case of any work, whether published or unpublished, including a cinematograph, the author was, at the date of the making of the work,

(i) a British subject,

(ii) a citizen or subject of, or a person ordinarily resident in a [Berne Convention country] ¹ treaty country, or

(iii) a resident within Her Majesty's Realms and Territories;

S.C. 1993, c. 44, s. 57(1) ¹;

S.C. 1994, c. 47, s. 57(1)

1996

5.(1)(a) in the case of any work, whether published or unpublished, including a cinematographic work, the author was, at the date of the making of the work a citizen or subject of, or a person ordinarily resident in a treaty country;

Bill C-32 1996, s. 5(1)

5. (1)(b) in the case of a cinematograph, whether published or unpublished, the maker, at the date of the making of the cinematograph,

(i) if a corporation, had its headquarters in a [Berne Convention country] ¹ treaty country, or

(ii) if a natural person, was

(A) a British subject,

(B) a citizen or subject of, or a person ordinarily resident in a, [Berne Convention country,] ¹ treaty country, or

(C) a resident within Her Majesty's Realms and Territories; or

S.C. 1993, c. 44, s. 57(1) ¹;

S.C. 1994, c. 47, s. 57(1)

1996

5. (1)(b) in the case of a cinematographic work, whether published or unpublished, the maker, at the date of the making of the cinematographic work,

(i) if a corporation, had its headquarters in a treaty country, or

(ii) if a natural person, was a citizen or subject of, or a person ordinarily resident in a treaty country; or

Bill C-32 1996, s. 5(1)

1984

For clarity and certainty of protection, all cinematographic works will be protected as a single class of original works.

GT p.10

1977

That motion pictures films be protected as specific works, whether or not they are of "original character".

CC p.81

5. (1)(c) in the case of a published work, including a cinematograph,

(i) in relation to paragraph 4(1)(a), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred within Her Majesty's Realms and Territories or in a [Berne Convention country] ¹ treaty country, or

(ii) in relation to paragraph 4(1)(b) or (c), the first publication occurred within Her Majesty's Realms and Territories or in a [Berne Convention country. ^{and}] ¹ treaty country.

S.C. 1993, c. 44, s. 57(1) ¹;

S.C. 1994, c. 47, s. 57(1)

1996

5.(1)(c) in the case of a published work, including a cinematographic work,

(i) in relation to subparagraph 2.2(1)(a)(i), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred in a treaty country, or

(ii) in relation to subparagraph 2.2(1)(ii) or (iii), the first publication occurred in a treaty country.

Bill C-32 1996, s. 5(1)

5. (1.01) Protection for older works

For the purposes of subsection (1), a country that becomes a Berne Convention country or a WTO Member after the date of the making or publication of a work shall, as of becoming a Berne Convention country or

WTO Member, as the case may be, be deemed to have been a Berne Convention country or WTO Member at the date of the making or publication of the work subject to subsection (1.02) and section 29.

S.C. 1994, c. 47, s. 57(1)

5. (1.02) Limitation

Subsection (1.01) does not confer copyright protection in Canada on a work whose term of copyright protection in the country referred to in that subsection had expired before that country became a Berne Convention country or WTO Member, as the case may be.

S.C. 1994, c. 47, s. 57(1)

5. (1.1) [Idem] ¹ First publication

The first publication described in subparagraph (1)(c)(i) or (ii) shall be deemed to have occurred within Her Majesty's Realms and Territories or in a [Berne Convention country] ¹ treaty country notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications did not exceed thirty days or such longer period as may be fixed by order in council.

S.C. 1993, c. 44, s. 57(1) ¹;
S.C. 1994, c. 47, s. 57(1)

1921-1993

3. (4) [When work deemed to be first published, if issued simultaneously in some other place. When work deemed to be published simultaneously in two places] ¹ ^{II} ^{III} When work deemed to be first published

For the purposes of this Act, a work shall be deemed to be first published [within Majesty's Dominions] ¹ ^{II} [within Her Majesty's Dominions] ^{III} within Her Majesty's Realms and Territories or within a foreign country to which this Act extends, notwithstanding that it has been published simultaneously in some other place, and a work shall be deemed to be published simultaneous in two places, if the time between the publication [in one such place] ¹ ^{II} ^{III} ^{IV} in one place and the other place does not exceed fourteen days or such longer period as may for the time being be fixed by order in council.

S.C., 1921, c. 24, s 3(4) ¹;
R.S. 1927, c. C-32, s. 3(4) ^{II};
R.S. 1952, c. C-55, 3. 3(4) ^{III};
R.S. 1970, c. C-30., s 3(4) ^{IV};
R.S. 1985, c. C-42, s 4(3)

1996

Subsection 5(1.1) of the Act is replaced by the following:

5. (1.03) Application of subsection (1.01) and (1.02)

Subsections (1.01) and (1.02) apply, and are deemed to have applied, regardless of whether the country in question became a Berne Convention country or a WTO Member before or after the coming into force of those subsection.

Bill C-32, 1996, s. 5(2)

5. (1.1) First publication

The first publication described in subparagraph (1)(c)(i) of (ii) is deemed to have occurred in a treaty country not withstanding that it in fact occurred previously elsewhere, if the interval between those two publications did not exceed thirty days.

Bill C-32, 1996, s. 5(2)

1977

That simultaneous publication be defined as a subsequent publication occurring within 30 days of the first publication.

CC p.46

5. (1.2) Idem.

Copyright shall subsist in Canada otherwise than as provided by subsection (1), except in so far as the protection conferred by the Act is extended as hereinafter provided to foreign countries to which this Act does not extend.

S.C. 1993, c. 44, s. 57(1)

5. (2) Minister may extend copyright to other countries

Where the Minister certifies by notice, published in the *Canada Gazette*, that any country that is not a [Berne Convention country] ¹ treaty country grants, or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by this Act, the country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends, and the Minister may give a certificate, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works,

S. 5 WORKS IN WHICH COPYRIGHT MAY SUBSIST

under the law of such country, differ from those in this Act.

S.C. 1993, c. 44, s. 57(1) ^I;
S.C. 1994, c. 47, s. 57(2)

1921-1993

4 (2) Minister may extend copyright to other countries

[If the Minister] ^I ^{II} Where the Minister certifies by notice, published in the *Canada Gazette*, that any country [which has not] ^I ^{II} that has not adhered to the Convention and the Additional Protocol thereto set out [in the Second Schedule to this Act,] ^I ^{II} [in the Second Schedule,] ^{III} in Schedule II, grants or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by this Act, [such country shall,] ^I ^{II} ^{III} ^{IV} the country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends, [and it shall be lawful for the Minister to give such a certificate as aforesaid] ^I ^{II} [and the Minister may give such a certificate as aforesaid] ^{III} ^{IV} and the Minister may give a certificate, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, under the law of such country, differ from those in this Act.

S.C. 1921, c. 24, s. 4(2) ^I;
R.S. 1927, c. C-32, s. 4(2) ^{II};
R.S. 1952, c. C-55, s. 4(3) ^{III};
R.S. 1970, c. C-30, s. 4(2) ^{IV};
R.S. 1985, c. C-42, s. 5(2)

1977

That the extension of benefits and rights provided in any new *Copyright* Act or the provision of any conditions thereunder be accomplished by Order in Council upon the recommendation of the Minister.

CC p.230

5. (2.1) Repealed - Copyright extended to Universal Copyright Convention countries

S.C. 1994, c. 47, s. 57(2)

1993-1994

5. (2.1) Copyright extended to Universal Copyright Convention countries

For the purposes of the rights conferred by this Act, a country shall be treated as if it were a country to which this Act extends if it has adhered to the Universal Copyright Convention, adopted on September 6, 1952 in Geneva,

Switzerland, or to that Convention as revised in Paris, France on July 24, 1971.

S.C. 1993, c. 15, s. 2

5. (3) [Copyright in records and other mechanical contrivances] ^I ^{II} ^{III} ^{IV} Copyright in records and contrivances

[Subject to subsection (4),] ^V ^{VI} copyright shall subsist for the term hereinafter mentioned in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if [such] ^I ^{II} ^{III} ^{IV} ^V those contrivances were musical, literary or dramatic works.

S.C., 1921, c. 24, s. 4(3) ^I;
R.S. 1927, c. C-32, s. 4(3) ^{II};
R.S. 1952, c. C-55, s. 4(3) ^{III};
R.S. 1970, c. C-30, s. 4(3) ^{IV};
R.S. 1970 (1972), c. 4 (2nd Supp.), s. 1 ^V;
R.S. 1985, c. C-42, s. 5(3) ^{VI}

1996

Subsections 5(3) to (6) of the Act are repealed.

Bill C-32 1996, s. 5(3)

1986

The government accepts this recommendation in principle. However, since these products are different from traditional creative works they will be included in the Act under a separate category although they will benefit from certain of the rights applicable to such works. These rights are known as neighbouring rights.

GRCRC 64, p.10

The government accepts this recommendation in principle. Apart from the right of reproduction recognized under the present Act, regardless of their national origin, the new Act will grant them public performance, transmission and retransmission rights. The conditions and mechanism for extending these new rights to sound recordings of foreign origin as suggested in recommendation 65 will, however, be defined in the Act.

GRCRC 65, p.10

1985

A sound recording should be protected as a separate category of copyright subject matter.

CRC 64, p.49

1984

Sound recordings will be protected in their own right as a separate class of works.

GT p.10

1977

That sound recordings be protected by copyright as subject matter distinct from literary, dramatic, musical or artistic works.

CC p.89

5. (4) Nature of copyright

Notwithstanding subsection 3(1), for the purposes of the Act, "copyright"

means, in respect of any record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced, the sole right to do the following in respect of the contrivance or any substantial part thereof:

- (a) reproduce it in any material form;
- (b) publish it, if it is unpublished; and,
- (c) rent it out.

S.C. 1993, c. 44, s. 57(2)

1972-1993

5.(4) Nature of copyright

Notwithstanding subsection 3(1), for the purposes of this Act, "copyright" means, in respect of any record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced, the sole right to reproduce [any such] ¹ the contrivance or any substantial part thereof in any material form.

R.S. 1970 (1972), c. 4 (2nd Supp.), s. 1 ¹;
R.S., 1985, c. C-42, s. 3(4)

1996

Subsections 5(3) to (6) of the Act are repealed.

Bill C-32 1996, s. 5(3)

5. (5) What constitutes rental

For the purpose of paragraph (4)(c), an arrangement, whatever its form, constitutes a rental of a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced if, and only if,

- (a) it is in substance a rental, having regard to all circumstances; and
- (b) it is entered into with motive of gain in relation to the overall operations of the person who rents out the contrivance.

R.S. 1993, c. 44, s. 57(2)

1996

Subsections 5(3) to (6) of the Act are repealed.

Bill C-32 1996, s. 5(3)

5. (6) Idem

For the purpose of paragraph (5)(b), a person who rents out a

contrivance with the intention of recovering no more than the cost, including overhead, associated with the rental operations, does not by that act alone have a motive of gain in relation to the rental operations.

R.S. 1993, c. 44, s. 57(2)

1996

Subsections 5(3) to (6) of the Act are repealed.

Bill C-32 1996, s. 5(3)

5. (7) Reciprocity protection preserved

For greater certainty, the protection to which a work is entitled by virtue of a notice published under subsection (2), or under that subsection as it read at the time before the coming into force of this subsection, is not affected by reason only of the country in question becoming a [Berne Convention country] ¹ treaty country.

R.S. 1993, c. 44, s. 57(2) ¹;
R.S. 1994, c. 47, s. 57(3)

1996

Reciprocity

22. (1) Reciprocity

Where the Minister is of the opinion that a country other than a Rome Convention country grants or has undertaken to grant

- (a) to performers and to makers of sound recordings, or
- (b) to broadcasters

that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part may, by a statement published in the *Canada Gazette*,

- (c) grant the benefits conferred by this Part

- i - to performers and to makers of sound recordings, or
- ii - to broadcasters

as the case may be, that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, and

- (d) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

22. (2) Reciprocity

Where the Minister is of the opinion that a country other than a Rome Convention country neither grants nor has undertaken to grant

s. 5 WORKS IN WHICH COPYRIGHT MAY SUBSIST & Work Not Adopted

(a) to performers, and to makers of sound recordings, or
(b) to broadcasters
that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part may, by a statement published in the *Canada Gazette*,

(c) grant the benefits conferred by this Part to performers, makers of sound recordings or broadcasters that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants those benefits to performers, makers of sound recordings or broadcasters that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, and

(d) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

22.(3) Application of Act -

Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2)

(a) applies in respect to performers, makers of sound recordings or broadcasters covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada, and

(b) applies in respect of a country covered by that statement, as if that country were Canada.

22.(4) Application of Act

Subject to any exceptions that the Minister may specify in a statement referred to in subsection (1) or (2), the other provisions of this Act also apply in the way described in subsection (3).

Bill C-32 1996, s. 14

WORK NOT ADOPTED

1. Audio-visual work

1986

The government agrees in principle with this recommendation.

GRCRC 45, p.8

1985

The new Act should provide for a distinct category of protected subject matter to be called "audio-visual works"

CRC 45, p.36

2. Broadcast

1996

21. (2) Condition for copyright

Subsection (1) applies only if the broadcaster

(a) at the time of the broadcast, had its headquarters in Canada, in a country that is a WTO Member or in a Rome Convention country; and

(b) broadcasts the communication signal from that country.

21. (3) Exception

Notwithstanding subsection (2), if the Minister is of the opinion that a Rome Convention country or country that is a WTO Member does not grant the right mentioned in paragraph (1)(d), the Minister may, by a statement published in the *Canada Gazette*, declare the broadcasters that have their headquarters in that country are not entitled to that right.

Bill C-32 1996, s. 14

1986

Broadcasts... will be assigned to a separate category together with sound recordings and performers' performances.

GRCRC 75, p.12

The government agrees with this recommendation in principle. The conditions and mechanisms for extending the rights granted under the Act to foreign broadcasters, as suggested in recommendation 77, will be defined in the Act.

GRCRC 77, p.12

1985

Broadcasts should be protected under the revised Act.

CRC 75, p.58

The rights should be provided to foreign broadcasters on the basis of reciprocity.

CRC 77, p.59

1984

The provision of a right in broadcasts could add an unnecessary layer of proprietary rights to already protected material. Such an extension could complicate the exploitation of material and add to negotiating costs of both owners and users. Although broadcasts are protected in a few other countries, the copyright conventions do not require Canada to provide this protection. For these reasons the new Act will not protect broadcasts.

GT p.12

1977

That copyright protection be provided to Canadian broadcasts with the following exclusive rights attaching to the originating broadcasting organization:

(a) the right to record the sounds and/or images broadcast;

(b) the right to use such a recording for:

(i) broadcasting or diffusing

(ii) causing the broadcast to be heard or seen in public

(c) the right to rebroadcast the broadcast.

CC p.107

3. Choreography, Performance & Pantomime

- 1986
The government accepts this recommendation.
GRCRC 31, p.6
- 1985
"Works of choreography", "works of performance" and "pantomimes" should be placed in a separate category of protected subject matter. Such works should not need to develop a dramatic plot or sequence to be protected.
CRC 31, p.26

4. Computer Information Storage, Retrieval and Program

- 1986
With regard to recommendation 58, the government agrees in principle that computer programs should benefit from the full regime of protection. However, it will give national treatment to foreign computer programs.
GRCRC 58, p.9
- 1985
Computer programs should be protected by the revised law as a separate category of subject matter with the full regime of protection on the basis of reciprocity.
CRC 58, p.45
- 1984
Copyright material will be protected regardless of the medium of expression. Hard copies such as magnetic tapes and discs will be considered copies, thus making unauthorized reproduction in these formats an infringement. Displays in video units, however, will not be considered copies. Works originally created and fixed in a computer will qualify for copyright protection irrespective of whether they exist or are fixed in another medium. Authorization to make reproductions and other protected uses of copyright material will be required at the input stage.
GT p.11

Computer programs in human-readable form will continue to be eligible for traditional copyright protection.

GT p.81

A computer program in machine-readable form will be eligible for computer program copyright.

GT p.82

All copies of a machine-readable program published with the consent of the computer program copyright owner shall be marked with a "c" in a circle, the year of publication, and the name of the computer program copyright owner in such a manner and location as may be specified by regulation. (Referred to as the computer program copyright notice.)

Regulations may require that the machine-readable program be marked in either or both machine-readable or human-readable form, and that the object containing the machine-readable program be marked in addition to or in lieu of the machine-readable program. Regulations will specify the nature of the marking of a modified or updated

machine-readable program where the computer program copyright owner is claiming an additional period of protection based upon the modification or updating.

GT p.84

The protection outlined will extend to nationals of all members of the Universal Copyright Convention and the Berne Convention unless such countries explicitly exclude computer programs in machine-readable form from copyright protection. Where any member state of the above conventions limit the term of protection for published computer programs in machine-readable form to a term less than five years, the Governor in Council may limit the term of protection in Canada for machine-readable programs created by nationals of those states to a similar period. Similarly, where any member state limit the adaptation right in human-readable programs to a period of less than five years, the Governor in Council may limit the right to a similar period in Canada. The Governor in Council may limit the protection given to machine-readable programs created by nationals of states that grant protection only to their nationals, or which do not extend protection to Canadians on the basis of national treatment or reciprocal treatment or which set conditions or formalities for the protection of machine-readable programs that are unduly onerous to foreign nationals and are inconsistent with the intellectual property regime.

GT pp.84-85

1977
That computer programs *per se* not be protected by copyright. That, where they fall under existing categories of protected material, computer programs embodied in that material be accorded the protection attached to those categories.

CC p.111

5. Contrivance

1977
That mechanical contrivances be the subject of an independent category of other protected material.

CC p.48

6. Edition

1986
This recommendation is accepted in principle. However, the conditions and the procedure for the extension of the legislation to foreign editions will be defined in the Act.

GRCRC18, p.4

1985
Protection should be extended on a reciprocal basis to those countries with similar protection.

CRC 18, p.16

In view of the originality involved in their preparation, editions of literary, dramatic, musical and artistic works should be protected against unauthorized reproduction for 25 years from publication. Protection should be extended on a reciprocal basis to those countries with similar protection.

CRC 18, p.16

1984
Although the edition itself is not protected, it may be indirectly protected through its component parts. This protection falls squarely within the kind of creativity the copyright law is designed for, whereas protection of the edition itself or of a new edition does not. Finally, Canada is not obliged to provide such protection by the copyright conventions. For these reasons

S. 5 Work Not Adopted

copyright will not be extended to cover new editions.

GT p.13

1977

That new editions of public domain materials published by a resetting of the materials be protected by copyright.

That the protection extend only to providing a right against reproduction and that the general section dealing with this matter contain the following safeguards:

(a) No new copyright is to be provided, other than in the edition.

(b) The edition must be a new resetting of a literary, dramatic, musical or artistic work.

(c) The publisher must be a qualified person at the time of the first publication, i.e. a Canadian publisher.

(d) The term is to be ten years.

(e) The editions must be marked as claiming typographic copyright, and must show the year of publication, failing which copyright is lost.

CC pp.112-113

7. Fixation

1986

Recommendation 54 will be considered when defining the concept of fixation.

GRCRC 54, p.9

1985

Fixation should be defined as all means capable of capturing a work, including capture in computer media, but excluding capture in a medium as volatile as a computer's main storage or display screen.

CRC 54, p.41

1984

The definition of fixation will include any means capable of capturing the work, whether written and notation formats or audio and video recording, including the simultaneous recording of works transmitted by broadcast or direct cable transmission.

GT p.6

1977

That fixation be a mandatory requirement of protection.

CC p.42

8. Form

1986

The government accepts this recommendation.

GRCRC 20, p.4

1985

Blank forms should not be specifically excluded from protection, but should be subject to the same criteria as other works.

CRC 20, p.17

1984

The new Act will include a provision to the effect that no work primarily intended to receive information will be considered eligible for copyright protection simply by reason of the arrangement of labels or headings designating the type of information to be provided. Nor will any system or series of such works intended to be used together be considered to be a compilation for purposes of attracting copyright protection.

GT p.14

9 Semi-Conductor Chip

1986

Mask works fixed in semi-conductor chips will be protected in the

Copyright Act but will be distinguished from traditional works.

GRCRC 62, 63, p.9

1985

Mask works fixed in semi-conductor chips should be protected by new legislation outside the *Copyright Act*.

CRC 62, p.47

The mask works to be protected are a series of related images that represent the three-dimensional pattern of circuits and components fixed in a semi-conductor chip.

CRC 63, p.47

10. Sound Recording

1996

18. (2) Conditions for copyright

Subsection (1) applies only if

(a) the maker of the sound recording was a Canadian citizen or permanent resident of Canada within the meaning of the Immigration Act, or a citizen or permanent resident of a Berne Convention country or a country that is a WTO Member, or, if a corporation, had its headquarters in one of the foregoing countries,

i - at the date of first fixation, or

ii - if that first fixation was extended over a considerable period, during any substantial part of the period, or

(b) the first publication of the sound recording in such quantity as to satisfy the reasonable demands of the public occurred in any country referred to in paragraph (a).

18. (3) Publication

The first publication is deemed to have occurred in a country referred to in paragraph (2)(a) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.

Bill C-32 1996, s. 14

11. Translation

1986

The government accepts this recommendation.

GRCRC 19, p.4

1985

Translations should be expressly included in the revised law as proper subject matter of copyright protection, without prejudice to the rights of the owner of the copyright in the underlying work.

CRC 19, p.17

12. Videogram & Videotape

1977

That videograms be treated as motion picture films for purposes of copyright protection.

CC p.83

That videotape be treated as motion picture films for purposes of copyright protection.

CC p.82

13. Work not protected by Convention

1977

That Canada not go beyond its present international commitments and protect works in situations not envisaged by the conventions.

CC p.46

TERM OF COPYRIGHT

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

6. Term of copyright

The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

S.C. 1993, c. 44, s. 58

1921-1993

6. Term of copyright

The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after [his death. end]
1 the death of the author.

S.C., 1921, c. 24, s. 5 1;
R.S. 1927, c. 32 s. 5 1;
R.S. 1955, c. C-55, s. 5 1;
R.S. 1970 c. C-30, s. 5 1;
R.S. 1985, c. C-42, s. 6

1984

The general term will be slightly modified from the date of the author's death plus fifty years to a calculation dating from the end of the year of death.

GT p.55

1977

That the general term of protection remain life of the author plus 50 years for all published original works.

CC p.63

6.1 Anonymous and pseudonymous works

Except as provided in section 6.2, where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

but where, during that term, the author's identity becomes commonly known, the term provided in section 6 applies.

S.C. 1993, c. 44, s. 58

1984

The new Act will explicitly provide that the term of protection for works by unknown authors will be the same as that given to unpublished sound recordings and cinematographic works, that is 75 years from creation.

GT p.57

1977

That published anonymous or pseudonymous works be protected for a period of 50 years from publication, but that where the author's identity is not in doubt or where he discloses his identity during the period, the ordinary term of protection apply.

CC p.67

6.2 Anonymous and pseudonymous works of joint authorship

Where the identity of all the authors of a work of joint authorship is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

but where, during that term, the identity of one or more of the authors becomes commonly known, copyright shall subsist for the life of whichever of those authors dies last, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

S.C. 1993, c. 44, s. 58

1977

That a publication under two or more names not be considered pseudonymous unless all names are pseudonymous.

That the known author of a pseudonymous work be deemed the sole author of that work.

CC p.67

7. Term of copyright in posthumous works

In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published or, in the case of a dramatic or musical work, been performed in public or, in the case of a lecture, been delivered in public, before that date, copyright shall subsist until publication, or performance or delivery in public, whichever may first happen, for the remainder of the calendar year of the publication or of the performance or delivery in public, as the case may be, and for a period of fifty years following the end of that calendar year.

S.C. 1993, c. 44, s. 58

1921-1993

7. [How long copyright to subsist in posthumous works] ^{I II III} Term of copyright in posthumous works

In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, [nor] ^{I II III IV} or, in the case of a dramatic or musical work, been performed in public, [nor,] ^{I II III IV} or, in the case of a lecture, been delivered in public, before that date, copyright shall subsist [till] ^{I II III} until publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter,

[and the proviso to section five of this Act shall, in the case of such a work apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.] ^{I end}

[and the provisions of the next following section relating to] ^{II}

[and the provisions of section 7 relating to] ^{III IV}

and the provisions of section 8 relating to the reproduction of a published work after the death of the author, [shall] ^{II} in the case of works mentioned in this section, apply as if the author had died at the date of such publication or performance or delivery in public. [, as aforesaid.] ^{II III IV}

S.C. 1921, c. 24, s. 9 ^I;
R.S. 1927, c. 32, s. 6 ^{II};
R.S. 1952, c. C-55, s. 6 ^{III};
R.S., 1970, c. C-30, s. 6 ^{IV};
R.S., 1985, c. C-42, s. 7

1996

7.(1) Term of copyright in posthumous works

Subject to subsection (2), in the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published or, in the case of a lecture or a dramatic or musical work, been performed in public or communicated to the public by telecommunication, before that date, copyright shall subsist until publication, or performance in public or communication to the public by telecommunication, whichever may first happen, for the remainder of the calendar year of the publication or of the performance in public or communication to the public by telecommunication, as the case may be, and for a period of fifty years following the end of that calendar year.

7. (2) Application of subsection (1)

Subsection (1) applies only where the work in question was published or performed in public or communicated to the public by telecommunication, as the case may be, before the coming into force of this section.

7.(3) Transitional provision

Where

(a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,

(b) subsection (1) would apply to that work if it had been published or performed in public or communicated to the public by telecommunication before the coming into force of this section, and

(c) the relevant death referred to in subsection (1) occurred during the period of one hundred years immediately before the coming into force of this section, copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of fifty years following the end of that calendar year, whether or not the work is published or performed in public or communicated to the public by telecommunication after the coming into force of this section.

7. (4) Transitional provision

Where

(a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,

(b) subsection (1) would apply to that work if it had been published or performed

in public or communicated to the public by telecommunication before the coming into force of this section, and

(c) the relevant death referred to in subsection (1) occurred more than one hundred years before the coming into force of this section, copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of five years following the end of the calendar year, whether or not the work is published or performed in public, or communicated to the public by telecommunication after the coming into force of this section.

Bill C-32 1993, s. 6

1984

The general term of life plus 50 years does provide an adequate measure of protection from any... denigration. Thus the general term will hold for all works, and the present provisions dealing with posthumous works will be abolished.

GT p.57

1977

That the term of protection provided to literary, dramatic and musical works unpublished at the author's death be until publication or public performance and for 50 years thereafter, but that the total term of protection not exceed 75 years after the death of the author, or 100 years after his death where the work has been deposited in an archive.

CC p.65

That an anonymous or pseudonymous work, unpublished at the time of the author's death, be protected until publication and for 50 years thereafter, provided that the total term of protection not exceed 75 years from the date of creation of the work, or 100 years from the date of creation in the case of a work deposited in an archive.

CC p.67

8. Repealed - Reproduction of work after death of author

S.C. 1993, c. 44, s. 59

1927-1993

8. (1) [Reproduction of work in which copyright subsists] ^I ^{II} Reproduction of work after death of author

After the expiration of twenty-five years or, in the case of a work in which copyright subsisted on

[the fourth day of June, one thousand nine hundred and twenty-one,] ^I

[the fourth day of June, 1921,] ^{II} ^{III}

June 4, 1921, thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and

that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him, calculated at the rate of ten per cent on the price at which he publishes the work.

R.S. 1927, c. 32 s. 7(1) ^I;
R.S. 1955, c. C-55, s. 7(1) ^{II};
R.S. 1970, c. C-30, s. 7(1) ^{III};
R.S. 1985, c. C-42, s. 8(1)

1921

Proviso, S.C. 1921, c. 24, s. 5

Provided that at any time after the expiration of twenty-five years or, in the case of a work in which copyright subsists at the passing of this Act thirty years from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright, royalties in respect of all copies of the work sold by him, calculated at the rate of ten per cent on the price at which he publishes the work; and, for the purposes of this proviso, the Governor in Council may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time and frequency of the payment of royalties, including (if he thinks fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

S.C. 1921, c. 24, s. 5

1927-1993

8. (2) Regulations

For the purposes of this section, the Governor in Council may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in those notices, and the mode, time and frequency of the payment of royalties, including, if he thinks fit, regulations requiring payment in advance or otherwise securing the payment of royalties.

R.S. 1927, c. 32 s. 7(2);
R.S. 1952, c. C-55, s. 7(2);
R.S. 1970, c. C-30, s. 7(2);
R.S. 1985, c. C-42, s. 8(2)

1986

The government accepts this recommendation.

GRCRC 27. p.5

1985

The reproduction, public performance and printing compulsory licenses should not be retained in the revised law.

CRC 27 p.23

1984 Licences will be abolished in the new Act. GT p.36
 1977 That sections 7 and 13 be repealed. CC p.76

9. (1) Cases of joint authorship

In the case of a work of joint authorship, except as provided in section 6.2, copyright shall subsist during the life of the author who dies last, for the remainder of the calendar year of that author's death, and for a period of fifty years following the end of that calendar year, and references in this Act to the period after the expiration of any specified number of years from the end of the calendar year of the death of the author shall be construed as references to the period after the expiration of the like number of years from the end of the calendar year of the death of the author who dies last.

S.C. 1993, c. 44, s. 60(1)

1931-1993

8 (1) Cases of joint authorship

In the case of a work of joint authorship, copyright shall subsist during the life of the author who dies last and for a term of fifty years after his death, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies last, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the date of the death of the author.

S.C. 1931, c. 8, s. 4;
 S.C., 1952, c. C-55, s. 8(1);
 R.S. 1970, c. C-30, s.8(1);
 R.S. 1985, c. C-42, s. 9(1)

1921-1931

8. Cases of joint authorship

In the case of a work of joint authorship, copyright shall subsist during

the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, which ever period is longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of he author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

S.C. 1921, c. 24, s. 6;
 R.S. 1927, c. C-32, s. 8

1984 The present term of protection for works of joint authorship will be retained. GT p.56

1977 That term of protection for joint works be life plus 50 years calculated from the death of the last surviving author, subject to the recommendations governing anonymous and pseudonymous works.

CC p.68

9. (2) Nationals of other countries

Authors who are nationals of any country, other than a country that is party to the North American Free Trade Agreement, that grants a term of protection shorter than that mentioned in subsection (1) are not entitled to claim a longer term of protection in Canada.

S.C., 1993, c. 44, s. 60(1)

1931-1993

9. (2) [no heading] ^I ^{II} Nationals of other countries

Authors who are nationals of any country [which] ^I that grants a term of protection shorter than that mentioned in [subsection one of this section shall not be] ^I subsection (1) are not entitled to claim a longer term of protection in Canada.

S.C. 1931, c. 8, s. 4 ^I;
 R.S. 1952, c. C-55, s. 8(2) ^{II};
 R.S., 1970, c. C-30, s. 8(2);
 R.S., 1985, c. C-42, s. 9(2)

10. (1) Term of copyright in photographs

The term for which copyright shall subsist in photographs shall be the remainder of the calendar year of the making of

(a) the initial negative or other plate from which the photograph was direct or indirectly derived, or

(b) the initial photograph, where there was no negative or other plate

and a period of fifty years following the end of that calendar year.

S.C. 1993, c. 44, s. 60(1)

1921-1993

10. [Term of copyright in photographs, Author, etc.] I

Term of copyright in photographs

The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner [of such negative] I II III IV of the negative at the time when [such negative] I II III IV the negative was made shall be deemed to be the author of the photograph so derived, and, [where such owner] I II III IV where that owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside [within His Majesty's Dominions] I II [within Her Majesty's Dominions] III within Her Majesty's Realms and Territories if it has established a place of business therein.

S.C., 1921, c. 24, s. 7 I;
R.S. 1927, c. C-32, s. 9 II;
R.S. 1952, c. C-55, s. 9 III;
R.S., 1970, c. C-30, s. 9 IV;
R.S., 1985, c. C-42, s. 10

1984

Since there does not appear to be any overriding policy considerations meriting retention of the shorter term of protection accorded to photographs, under the new Act the term will be the same as for all other artistic works.

GT p.56

1977

That photographs and engravings enjoy the same term of protection as all other artistic works: 50 years after the death of the author.

CC p.66

10. (2) Author of photograph

The person who

(a) was the owner of the initial negative or other plate at the time when that negative or other plate was made, or

(b) was the owner of the initial photograph at the time when that photograph was made, where there was no negative or other plate,

shall be deemed to be the author of the photograph and, where that owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Her Majesty's Realms and Territories or to be ordinarily resident in a Berne Convention country if it has established a place of business therein.

S.C. 1993, c. 44, s. 60(1)

1996

The portion of subsection 10(2) of the Act after paragraph (b) is replaced by the following:

is deemed to be the author of the photograph and, where that owner is a body corporate, the body corporate is deemed for the purposes of this Act to be ordinarily resident in a treaty country if it has established a place of business therein.

Bill C-32, 1996, s. 7

11. Term of copyright in records and perforated rolls, etc.

The term for which copyright shall subsist in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced shall be the remainder of the calendar year of the making of the initial plate from which the contrivance was directly or indirectly derived, and a period of fifty years following the end of the calendar year, and the maker of the contrivance shall be deemed to be its author, and, where that maker is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Her Majesty's Realms and Territories or to be ordinarily resident in a Berne Convention country if it has established a place of business therein.

S.C. 1993, c. 44, s. s. 60(1)

1921-1993

8. Term of copyright in records and perforated rolls

The term for which copyright shall subsist in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of [such] ^{I II III IV} the original plate at the time when [such] ^{I II III IV} the plate was made shall be deemed to be the author of such contrivance, and where [such] ^{I II III IV} that owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within [His Majesty's Dominions] ^{I II} [Her Majesty's Dominions] ^{III} Her Majesty's Realms and Territories if it has established a place of business therein.

S.C., 1921, c. 24, s. 8. ^I;
R.S. 1927, c. C-32, s. 10 ^{II};
R.S. 1952, c. C-55, s. 10 ^{I III};
R.S. 1970, c. C-30, s. 10 ^{IV};
R.S. 1985, c. C-42, s. 11

1996

Section 11 of the Act is repealed.

Bill C-32 1996, s. 8

Term of Rights

23. (1) Terms of right

Subject to this Act, the rights conferred by sections 15, 18 and 21 terminate fifty years after the end of the calendar year in which...

(b) in the case of a sound recording, the first fixation occurred; or

23. (2) Term of right to remuneration

The rights to remuneration conferred on performers and makers by section 19 have the same terms, respectively, as those provided by paragraphs (1)(a) and (b).

23. (3) Application of subsections (1) and (2)

Subsections (1) and (2) apply whether the fixation, performance or broadcast occurred before or after the coming into force of this Part.

23. (4) Berne Convention countries, Rome Convention countries, WTO Members

Where the performer's performance, sound recording or communication signal meets the requirements set out in section 15, 18 or 21, as the case may be, a country that becomes a Berne Convention country, a Rome Convention country or a WTO Member after the date of the fixation, performance or broadcast is, as of becoming a Berne Convention country, Rome Convention country or WTO Member, as the case may be, deemed to

have been such at the date of fixation, performance or broadcast.

23.(5) Where term of protection expired

Subsection (4) does not confer any protection in Canada where the term of protection in the country referred to in that subsection had expired before that country became a Berne Convention country, Rome Convention country or WTO Member, as the case may be.

Bill C-32 1996, s. 14

1986

The government agrees with this recommendation in principle.

GRCRC 70, p.10

1985

Sound recordings should be protected for the shorter of 50 years following publication or 75 years following fixation.

CRC 70, p.52

1984

The term of protection for sound recordings ... will extend until expiry of either of the following - the period from the date of first publication until the end of that year plus 50 years thereafter - in instances where the work is not published, the period from creation until the end of that year plus 75 years thereafter.

GT p.56

1977

That copyright subsist for 50 years from the end of the calendar year in which the recording was first made.

CC p.89

11.1 Cinematographs

Copyright in a cinematograph or a compilation of cinematographs shall subsist

S.C. 1993, c. 44, s. 60(1)

1996

11.1 Cinematograph works

Except for cinematographic works in which the arrangement or acting form or the combination of incidents represented give the work a dramatic character, copyright in a cinematographic work or a compilation of cinematographic works subsists

Bill C-32 1996, s. 9(1)

11.1(a) for the remainder of the calendar year of the first publication of the cinematograph or of the compilation, and for a period of fifty years following the end of that calendar year; or

S.C. 1993, c. 44, s. 60(1)

1996

11.1(a) for the remainder of the calendar year of the first publication of the cinematographic work or of the compilation, and for a period of fifty years following the end of that calendar year; or

Bill C-32, 1996, s. 9(2)

11.1(b) if the cinematograph or compilation is not published before the expiration of fifty years following the end of the calendar year of its making, for the remainder of that calendar year and a period of fifty years following the end of that calendar year.

S.C. 1993, c. 44, s. 60(1)

1996

11.1(b) if the cinematographic work or compilation is not published before the expiration of fifty years following the end of the calendar year of its making, for the remainder of that calendar year and for a period of fifty years following the end of that calendar year.

Bill C-32, 1996, s. 9(2)

1984

The term of protection for... cinematographic works will extend until expiry of either of the following... the period from the date of first publication until the end of that year plus 50 years thereafter or, in instances where the work is not published, the period from creation until the end of that year plus 75 years thereafter.

GT p.56

1977

That the term of protection be 50 years from the date of the making of a film.

CC p.81

12. Where copyright belongs to Her Majesty

Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.

S.C. 1993, c. 44, s. 60(1)

1921-1993

12. Where copyright belongs to [His Majesty] ^I ^{II} Her Majesty

Without prejudice to any rights or privileges of the Crown, [where any work has, whether before or after the commencement of this Act been prepared or] ^I where any work is, or has been, prepared or published by or under the direction or control [of His Majesty] ^I ^{II} of Her Majesty or any government department, the copyright in the work shall, subject to any

agreement with the author, belong [to His Majesty] ^I ^{II} to Her Majesty and [in such case] ^I ^{II} ^{III} ^{IV} in that case shall continue for a period of fifty years from the date of the first publication of the work.

S.C., 1921, c. 24, s. 10 ^I;

R.S. 1927, c. C-32, s.11 ^{II};

R.S. 1952, c. C-55, s. 11 ^{III};

R.S. 1970, c. C-30, s. 11 ^{IV};

R.S. 1985, c. C-42, s. 12

1986

The government agrees in principle with recommendation 9. It has begun consultations on this subject with the provincial governments.

GRCRC 9, p.3

The government agrees in principle with recommendation 10. It has begun consultations on this subject with the provincial governments.

GRCRC 10, p.3

The government feels that recommendation 11 raises a number of issues that ought to be examined in greater depth. A number of categories of works produced by the government and its agencies, other than those identified by the Sub-Committee, might require protection.

GRCRC 11, p.3

The government feels that recommendation 12 raises a number of issues that ought to be examined in greater depth. A number of categories of works produced by the government and its agencies, other than those identified by the Sub-Committee, might require protection.

GRCRC 12, p.3

The government agrees in principle with recommendation 13. It has begun consultations on this subject with the provincial governments.

As for recommendation 13, it will be necessary to ensure that this will not entail the removal of rights - particularly moral rights - that are not needed for the purpose of achieving the objectives sought by recommendation 13.

GRCRC 13, p.3

1985

The Crown in the right of Canada and the right of every province should be subject to the provisions of the *Copyright Act*. Any exception to the above rule should be included in statutes dealing with emergency powers rather than in the *Copyright Act*.

CRC 9, p.9

Statutes, regulations and judicial decisions of courts and tribunals at all levels of jurisdiction should be in the public domain.

CRC 10, p.10

There should be no copyright in government works except as follows:

(a) a moral right of integrity to ensure the accuracy of works in the nature of standards should be provided;

(b) works produced by a Crown agency, such as the Canadian Broadcasting Corporation or the National Film Board, the purpose of which is to entertain rather than assist in

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policy debate and evaluations, should be protected; and,

(c) custom-made statistics and statistical works in restricted circulation should be protected if it is found desirable to continue the practice of making these works available to particular users on a cost-recovery basis.

CRC 11, p.11

Provincial public documents should have the same copyright status as federal ones and consultations should take place between the two levels of government on this issue.

CRC 12, p.12

Written submissions sent to Parliament, Legislatures or to public bodies of inquiry should be in the public domain from the time of their receipt.

CRC 13, p.12

1984

There will be no specific provisions in the new Act regarding the term of protection for works prepared or published by or under the control of the Crown. The term will be the same as that attaching to the particular category of work created.

GT p.58

In many cases, however, the exploitation of Crown-produced works, such as those of the National Film Board and the CBC, is dependent upon the exercise of copyright. As the Crown can waive its rights where protection is not required, copyright will remain in Crown works. The continuation of Crown copyright ensures that the Crown will be able to enforce its copyrights when such action is in the public interest. In order to assuage fears that the Crown might unduly restrict public access to important government materials, guidelines will be formulated outlining government policy and indicating the classes of works for which Crown copyright will or will not be enforced.

GT p.75

There presently exists in Canada a Crown prerogative right to authorize printing and publishing of works such as Acts of Parliament and judicial decisions. In view of the above proposals for the exercise of Crown copyright and in order to ensure integrity of use of such works, the Crown prerogative right will remain.

GT pp.75-76

Even if government accepts as a general principle that employees, including Crown employees, should be the first owner of copyright, employee ownership will not extend to copyright in works such as judicial pronouncements and works of the legislature, which will be owned by the Crown. This will ensure that copyright in the laws of the land and in all judicial decisions will always belong to the Crown and not to any individual.

GT p.76

Since it is recommended that the Crown enjoy copyright protection for its

own works, it would seem appropriate for the Crown to accept the obligations imposed upon other users. For these reasons both the federal and provincial governments will be explicitly bound by the new Act.

GT pp.76-77

1977

That the Crown be subject to the *Copyright Act*.

That, if the Crown retains prerogative copyright, an exhaustive list of items coming within the prerogative be enumerated in any new Act.

That a specific exception be provided for parliamentary use of any copyright material in the exercise of legislative functions.

That the Crown review its interests in the acquisition, control, administration and assertion of copyright.

CC p.226

TERM NOT ADOPTED

1. Audio-visual work

1986

The government agrees with this recommendation in principle.

GRRC 51, p.8

1985

Audio-visual works should be protected for the shorter of 50 years following publication or 75 years following fixation.

CRC 51, p.36

2. Broadcast

1996

Term of Rights

23. (1) Terms of right

Subject to this Act, the rights conferred by sections ... 21 terminate fifty years after the end of the calendar year in which

(c) in the case of a communication signal, it was broadcast.

23.(2) Term of right to remuneration

The rights to remuneration conferred on performers and makers by section 19 have the same terms, respectively, as those provided by paragraphs (1)(a) and (b).

23.(3) Application of subsections (1) and (2)

Subsections (1) and (2) apply whether the fixation, performance or broadcast occurred before or after the coming into force of this Part.

23.(4) Berne Convention countries, Rome Convention countries, WTO Members

Where the performer's performance, sound recording or communication signal meets the requirements set out in section 15, 18 or 21, as the case may be, a country that becomes a Berne Convention country, a Rome Convention country or a WTO Member after the date of the fixation, performance or broadcast is, as of becoming a Berne Convention country,

Rome Convention country or WTO Member, as the case may be, deemed to have been such at the date of fixation, performance or broadcast.

23.(5) Where term of protection expired

Subsection (4) does not confer any protection in Canada where the term of protection in the country referred to in that subsection had expired before that country became a Berne Convention country, Rome Convention country or WTO Member, as the case may be.

Bill C-32 1996, s. 14

1986

The government agrees with this recommendation in principle.

GRCRC 78, p.12

1985

Broadcasts should be protected for a period of 25 years from the date of their fixation .

CRC 78, p.59

1977

That the term of protection be 50 years from the time of the making of the broadcast.

CC p.107

3. Computer Information Storage, Retrieval and Program

1986

The government agrees with this recommendation in principle.

GRCRC 60, p.9

1985

The term of protection for computer programs should be the life of the author plus 50 years.

CRC 60, p.46

1984

The right of a copyright owner to authorize (or prohibit) a machine-readable program based upon a published computer program in human-readable form will last five years from

the year of creation of the human-readable program.

GT. p.82

The term of protection for an unpublished machine-readable program will be five years from the date of creation. The term of protection for a published machine-readable program will be five years from the year of publication. If a machine-readable program is published more than 5 years after its date of creation, it will not be eligible for computer program copyright.

GT p.83

If computer programs in machine-readable form are protected under the current *Copyright Act*, and if a particular computer program in human-readable form is protected under the Act, the right to prohibit the making of a machine-readable program based upon the human-readable program will continue five years after the coming into force of the new Act.

If a machine-readable program is protected under the current *Copyright Act*, it will be entitled to protection under the terms of the new *Copyright Act* for five years after it comes into force.

GT p.85

4. Edition

1986

The recommendation is accepted in principle. However, the conditions and procedure for the extension of the legislation to foreign editions will be defined in the Act.

GRCRC 18, p.4

1985

In view of the originality involved in their preparation, editions of literary, dramatic, musical and artistic works should be protected against unauthorized reproduction for 25 years from publication. Protection should be extended on a reciprocal basis to those countries with similar protection.

CRC 18, p.16

1977

The term is to be 10 years.

CC p.113

OWNERSHIP OF COPYRIGHT

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

13. (1) Ownership of copyright

Subject to [the provisions of] ^{I II III} this Act, the author of a work shall be the first owner of the copyright therein.

[Provided that] ^{I II}

S.C. 1921, c. 24, s. 11(1) ^I;
R.S. 1927, c. C-32, s. 12 ^{II};
R.S. 1952, c. C-55, s. 12(1) ^{III};
R.S. 1970, c. C-30, s. 12(1);
R.S. 1985, c. C-42, s. 13(1)

1986

The government agrees with this recommendation.

GT 14, p.4

1985

The revised law should recognize that corporate and cooperative entities can hold and exercise full rights, including moral rights.

CRC 14, p.13

1984

The new Act will maintain the author-as-first-owner criterion wherever appropriate but... there will be certain instances where the rule may have to be qualified.

GT p.29

1977

That relevant variations of the rule be made to clarify cases where the original owner is a corporation. This variation would also apply to situations where, by virtue of an employment relationship, copyright originally vests with the employer.

CC p.63

The author (will) be the first owner of copyright.

CC .71

13. (2) Engraving, photograph or portrait

Where, in the case of an engraving, photograph or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then in the absence of any agreement to the contrary, the person [by whom such plate or] ^I by whom the plate or other original was ordered shall be the first owner of the copyright.

S.C. 1921, c. 24, s. 11(1)(a) ^I;
R.S. 1927, c. C-32, s. 12(a) ^I;
R.S. 1952, c. C-55, s. 12(2) ^I;
R.S. 1970, c. C-30, s. 12(2) ^I;
R.S. 1985, c. C-42, s. 13(2)

1986

The government agree with this recommendation.

GRCRC 17, p.4

The government agrees in principle with these recommendations.

GRCRC 36, 37, p.6

1985

The copyright in commissioned engravings, photographs and portraits should vest in the author.

CRC 17, p.14

Ownership of copyright in a photograph should vest in the person who composed the photograph.

CRC 36, p.30

There should be no specific exception from copyright liability for the benefit of photofinishers.

CRC 37, p.30

1984

In the new Act the author of a photograph will be considered to be the person who "composed" the photograph, i.e. the photographer.

GT p.29

Section 12(2) will be repealed, and the Act will provide that subject to an arrangement to the contrary the author of any work is the initial owner of the copyright therein, notwithstanding the fact that the work was commissioned.

GT p.31

1977

That ownership in a photograph vest in the person owning the material on which the photograph is taken.

CC p.71

13. (3) Work made in the course of employment

Where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical.

S.C. 1921, c. 24, s. 11(1)(b);
R.S. 1927, c. C-32, s. 12(b);
R.S. 1952, c. C-55, s. 12(3);
R.S. 1970, c. C-30, s. 12(3);
R.S. 1985, c. C-42, s. 13(3)

1986

The government agrees with this recommendation.

GRCRC 14, p.4

The government agrees with these recommendations. However, it will study whether the term "employee" should be defined in the Act, as suggested by the Sub-Committee in recommendation 16.

GRCRC 15, 16, p.4

1985

The revised law should recognize that corporate and cooperative entities can hold and exercise full rights, including moral rights.

CRC 14, p.13

First ownership of copyright should vest in an employer in the case of works created by employees in the course of employment subject, as now, to any agreement to the contrary.

CRC 15, p.14

The revised law should clarify the meaning of "employee".

CRC 16, p.14

1984

Public comment is invited on the issue of the first ownership of works created by employees during the course of their employment.

GT p.31

Even if the government accepts as a general principle that employees, including Crown employees, should be the first owner of copyright, employee ownership will not extend to copyright in works such as judicial pronouncements and works of the legislature, which will be owned by the Crown. This will ensure that copyright in the laws of the land and in all judicial decisions will always belong to the Crown and not to any individual.

GT p.76

1977

That relevant variations of the rule be made to clarify cases where the original owner is a corporation. This variation would also apply to situations where, by virtue of an employment relationship, copyright originally vests with the employer.

CC p.63

That ownership of the copyright in any commissioned work be vested in the person commissioning the work, in the absence of any agreement to the contrary.

That similarly, the principle that the employer is the first owner of the copyright in works made by employees in the course of their employment, be retained.

CC p.71

That, unless otherwise provided by contract, where a contribution to a particular periodical is ordered by a proprietor:

- i - the proprietor be entitled to the copyright only insofar as it relate to publication in that periodical;
- ii - the author be entitled to the copyright in all other respects.

That the principle be recognized that a work commissioned for one

purpose cannot be used for another, unless there is an agreement to the contrary.

CC p.71

13. (4) Assignment of right by owner

The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to territorial limitations, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but [no such] ¹ but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent.

R.S., 1921, c. 24, s. 11(2) ¹;
R.S. 1927, c. C-32, s. 12(2) ¹;
R.S. 1952, c. C-55, s. 12(4) ¹;
R.S. 1970, c. C-30, s. 12(4) ¹;
R.S. 1985, c. C-42, s. 13(4)

1996

13 (4) Assignments and licences

The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations relating to territory, medium or sector of the market or other limitations relating to the scope of the assignment, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by the owners duly authorized agent.

Bill C-32 1996, s. 10

13. (6) Assignment of right of action

For greater certainty, it is deemed always to have been the law that a right of action for infringement of copyright may be assigned in association with the assignment of the copyright or the grant of an interest in the copyright by licence.

13.(7) Exclusive licence

For greater certainty, it is deemed always to have been the law that a grant of an exclusive licence in a copyright constitutes the grant of an interest in the copyright by licence.

Bill C-32 1996, s. 10

1986

The government agrees in principle with this recommendation. In addition, with regard to recommendation 8, a provision will be incorporated in the Act to limit the term of licences and of the assignment of rights so as to protect creators from abuse.

GRCRC 8, p.2

Unimpeded negotiations concerning the use and assignment of rights should be preferred whenever possible over compulsory arrangements, prohibitions and other predetermined outcomes .

CRC p.8

1984

No changes to the substance of those transfers will be made in the new Act, although certain details will be altered:

"By Rights" - The new Act will permit the owner of a copyright to transfer any of the exclusive rights, including any subdivision of the rights specifically enumerated in the Act;

"By Time" - There have been no proposals to alter this section and there are no strong public policy reasons for making changes;

"By Territory" - The new Act will maintain the right of copyright owners to assign their rights "generally or subject to territorial limitations"

GT pp.59-60

Authors will be entitled to moral rights even when they have made an *in futuro* assignment of copyright.

GT p.33

The new Act will require written conveyances for both assignments of copyright and exclusive licences but not for non-exclusive licences.

GT p.60

1977

That the present provisions regarding the exercise of copyright ownership be retained with the exception of the provision respecting territorial assignment.

That a licence have priority in law over an assignment made subsequently.

CC p.73

That provision be made to permit assignment of copyright in works yet to be created.

CC p.73

14. (1) [Limitation in case the author is first owner of copyright] ^{I II III} **Limitation** [when author] ^{IV} **where author is first owner of copyright**

[Provided that, where] ^I Where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein, made by him, otherwise than by will, [after the passing of this Act, shall be operative] ^I [after the fourth day of June, one thousand nine hundred and twenty-one shall be operative] ^{II} [after the 4th day of June, 1921 is operative] ^{III IV} after June 4, 1921 is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary

interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives [as part of his estate, and any] ^{I II III IV} as part of the estate of the author and any agreement entered into [by him as to] ^{I II III IV} by the author as to the disposition of such reversionary interest [shall be null and void;] ^{I II} [is null and void;] ^{III} is void.

[but nothing in this proviso shall be] ^I

[but nothing in this subsection shall be] ^{II III IV}

[construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work] ^{I II III IV}

S.C. 1921, c. 24, s. 11(2) ^I;

R.S. 1927, c. C-32, s. 12(3) ^{II};

R.S. 1952, c. C-55, s. 12(5) ^{III};

R.S. 1970, c. C-30, s. 12(5) ^{IV};

R.S. 1985, c. C-42, s. 14(1)

14. (2) Restriction

Nothing in subsection (1) shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

R.S. 1985, c. C-42, s. 14(2)

1984

This provision will be repealed from the Act.

GT p.57

For purposes of certainty, the new *Copyright Act* will provide that where the original of any work not previously published is devised by will, the beneficiary will receive the copyright in the work provided that the testator was the copyright owner at the time of death.

GT p.60

1977

That moral rights be attached to the person of the author, but that they may be transmitted on the death of the author to his heirs or, through testamentary disposition, to a third party.

CC p.59

That s 12(5) be repealed.

CC p.69

That the devising of the original of any unpublished material, protected by copyright, presumes devising of the copyright therein, unless a contrary intention is evidenced in the will.

CC p.73

That subsection 12(5) be repealed.

CC p.76.

14. (3) Ownership in case of partial assignment

Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, [as respects the rights so assigned] ^{I II III IV} with respect to the rights so assigned, and the assignor, [as respects the rights not assigned] ^{I II III IV} with respect to the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and [the provisions of this Act shall have effect accordingly] ^{I II III} this Act has effect accordingly.

S.C. 1921, c. 24, s. 11(3) ^I;
R.S. 1927, c. C-32, s. 12(4) ^{II};
R.S. 1952, c. C-55, s. 12(6) ^{III};
R.S. 1970, c. C-30, s. 12(6) ^{IV};
R.S. 1985, c. C-42, s. 14(3)

1996

Subsection 14(3) of the Act is repealed.

Bill C-32 1996 s. 11

13.(5) Ownership in the case of partial assignment

Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, with respect to the rights so assigned, and the assignor, with respect to the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and this Act has effect accordingly.

Bill C-32, 1996, s. 10

14. (4) [12(7)] ^I Repealed - Author's right to restrain acts prejudicial to his honour or reputation

S.C. 1988, c. 15, s. 3 ^I;
R.S. 1985 (1988), c.10 (4th Supp.) s. 3

1931-1985

14. (4) Author's right to restrain acts prejudicial to his honour or reputation

Independently of the author's copyright, and even after the assignment, either wholly or partially, [of the said copyright] ^{I II} of the copyright, [the author shall have] ^I the author has the right to claim authorship of the work, as well as the right to restrain any distortion, mutilation or other modification [of the said work] ^I of the work [which would be] ^I that would be prejudicial to his honour or reputation.

S.C. 1931, c. 8, s. 5 ^I;
R.S. 1952, c. C-55, s. 12(7) ^I;
R.S. 1970, c. C-30, s. 12(7) ^{II};
R.S. 1985, c. C-42, s. 14(4)

1987

Subsection 12(7) of the said Act is repealed.

Bill C-60, 1987, 3, p.2

OWNERSHIP NOT ADOPTED

1. Communications Signal

1996

OWNERSHIP OF COPYRIGHT

24. Ownership of copyright

The first owner of the copyright (c) in a communication signal, is the broadcaster that broadcasts it.

25. Assignment of rights

Subsection 13(4) to (7) apply, with such modifications as circumstances require, in respect of the rights conferred by this Part on performers, makers of sound recordings and broadcasters.

Bill C-32 1996 s. 14

2. Cinematographs

1984

The new Act will... provide that the author of a cinematographic work is, in essence, the producer, defined as the person principally responsible for the arrangements undertaken for the making of the work. The various contributors, like the contributors to a collective work, will continue to have copyright in their individual contributions insofar as they are subject matter of copyright, and provided they have not assigned copyright to the producer.

GT p.30

1977

That ownership of copyright in a film rests with the "maker" defined as the person by whom the arrangements necessary to make the film were undertaken.

CC p.81

3. Computer Information Storage, Retrieval and Programs

1986

The government agrees with these recommendations in principle.

GRCRC 56, 57, p.9

1985

Where a work created with the assistance of a computer is original the copyright in that work should be owned by the person responsible for its making and not by the owner of the copyright in the original program.

CRC 56, p.43

Ownership in compilations produced by computer data storage and retrieval systems should be vested in the individual or entity primarily responsible for the arrangement undertaken for making the compilation.

CRC 57, p.44

4. Performer's Performance

1996

OWNERSHIP OF COPYRIGHT

24. Ownership of copyright

The first owner of the copyright
(a) in a performer's performance, is the performer;

25. Assignment of rights

Subsection 13(4) to (7) apply, with such modifications as circumstances require, in respect of the rights conferred by this Part on performers, makers of sound recordings and broadcasters.

Bill C-32 1996 s. 14

1986

The government agrees with this recommendation in principle.

Recommendation 73 will be subject to recommendation 15 (*regarding employees*), on which we have already commented.

GRCRC 73, p.11

1985

Performers should be the first owners of the copyright in their performance.

CRC 73, p.56

5. Sound Recordings

1996

OWNERSHIP OF COPYRIGHT

24. Ownership of copyright

The first owner of the copyright
(b) in a sound recording, the maker; or

25. Assignment of rights

Subsection 13(4) to (7) apply, with such modifications as circumstances require, in respect of the rights conferred by this Part on performers, makers of sound recordings and broadcasters.

1986

The government agrees with this recommendation in principle.

GRCRC 66, p.10

1985

The owner of the copyright in a sound recording should be the individual or entity principally responsible for the arrangements undertaken for its making.

CRC 66, p.52

1984

The person principally responsible for the arrangements undertaken for the making of the sound recording will be defined as the author. In most instances this person will be the record producer.

GT p.30

1977

That the "maker" be defined as the person or entity by whom the arrangements necessary to make the recording were undertaken.

CC p.89

PERFORMER'S RIGHTS

S.C. 1994, c. 47, s. 58

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

14.01 (1) Performer's rights (post WTO performances)

Where a performer's performance takes place in a country that is a WTO Member, on or after the later of the day on which this section comes into force and the day on which that country becomes a WTO Member, the performer has the sole right

(a) to fix the performer's performance, or any substantial part thereof, by means of a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced,

(b) to reproduce

(i) the fixation described in paragraph (a), or any substantial part thereof, and

(ii) any reproduction of that fixation, or any substantial part of such reproduction,

where that fixation was made without the performer's consent, and

(c) to communicate the performer's performance, or any substantial part thereof, to the public by telecommunication at the time of the performer's performance,

and to authorize any such act.

S.C. 1994, c. 47, s. 58

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

The Act is amended by adding the following after section 14.2:

Bill C-32 1996, s. 14

PART II
COPYRIGHT IN PERFORMER'S
PERFORMANCES, SOUND
RECORDINGS AND
COMMUNICATION SIGNALS

PERFORMERS' RIGHTS

15. (1) Copyright in performer's performances

Subject to subsection (2), a performer has a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

(a) if it is not fixed,

i - to communicate it to the public by telecommunication,

ii - to perform it in public, where it is communicated to the public by telecommunication otherwise than by communication signal, and

iii - to fix it in any material form,

(b) if it is fixed,

i - to reproduce any fixation that was made without the performer's authorization,

ii - where the performer authorized a fixation, to reproduce any reproduction of that fixation, if the reproduction being reproduced was made for a purpose other than that for which the performer's authorization was given, and

iii - where a fixation was permitted under Part III or VIII, to reproduce any reproduction of that fixation, if the reproduction being reproduced was made for a purpose other than one permitted under Part III or VIII, and

(c) to rent out a sound recording of it,

and to authorize any such acts.

15. (2) Conditions

Subsection (1) applies only if the performer's performance

(a) takes place in Canada or in a Rome Convention country;

(b) is fixed in

i - a sound recording whose maker, at the time of the first fixation,

A - if a natural person, was a Canadian citizen, or permanent resident of Canada within the meaning of the *Immigration Act*, or a citizen or permanent resident of a Rome Convention country, or

B - if a corporation, had its headquarters in Canada or in a Rome Convention country, or

ii - a sound recording whose first publication in such a quantity as to satisfy the reasonable demands of the public occurred in Canada or in a Rome Convention country; or

(c) is transmitted at the time of the performer's performance by a communication signal broadcast from Canada or a Rome Convention country by a broadcaster that has its headquarters in the country of broadcast.

15. (3) Publication

The first publication is deemed to have occurred in a country referred to in paragraph (2)(b) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.

S. 14.01 PERFORMER'S RIGHTS

16. (1) Communication by communication signal

Where a performer authorizes any person to communicate the performer's performance to the public by communication signal, the performer may not object to any subsequent communication to the public by telecommunication, by that person, of the performer's performance

16.(2) Contractual arrangements

Subsection (1) does not prevent the performer from entering into a contract governing the use of the performer's performance for the purpose of broadcasting, fixation or retransmission.

Bill C-32 1996, s. 14

17. (1) Cinematographic works

Where the performer authorizes the embodiment of the performer's performance in a cinematographic work, the performer may no longer exercise, in relation to that performer's performance, the copyright referred to in subsection 15.(1).

17.(2) Right to remuneration

Where there is an agreement governing the embodiment referred to in subsection (1) and that agreement provides for a right to remuneration for the reproduction, performance in public or communication to the public by telecommunication of the cinematographic work, the performer may enforce that right against

(a) the other party to the agreement or, if that party assigns the agreement, the assignee, and

(b) any other person who

i - owns the copyright in the cinematographic work governing the reproduction of the cinematographic work, its performance in public or its communication to the public by telecommunication, and

ii - reproduces the cinematographic work, performs it in public or communicates it to the public by telecommunication,

and persons referred to in paragraphs (a) and (b) are jointly and severally liable to the performer in respect of the remuneration relating to that copyright.

17. (3) Application of subsection (2)

Subsection (2) applies only if the performer's performance is embodied in a cinematographic work that is a certified production within the meaning assigned by the *Income Tax Regulations*.

17. (4) Exception

If so requested by a country that is a party to the North American Free Trade Agreement, the Minister may, by a statement published in the *Canada Gazette*, grant the benefits conferred by this section, subject to any terms and conditions specified in the statement, to performers who are nationals of that country and whose performer's

performances are embodied in cinematographic works that are not certified productions within the meaning assigned by the *Income Tax Regulations*.

Bill C-32 1996, s. 14

26. (1) Performer's performance in WTO country

Where a performer's performance takes place on or after January 1, 1996 in a country that is a WTO Member, the performer has, as of the date of the performer's performance, a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

(a) if it is not fixed, to communicate it to the public by telecommunication and to fix it in a sound recording, and

(b) if it has been fixed without the performer's authorization, to reproduce the fixation or any substantial part thereof,

and to authorize any such acts.

26. (2) Where country joins WTO after January 1, 1996

Where a performer's performance takes place on or after January 1, 1996 in a country that becomes a WTO Member after the date of the performer's performance, the performer has the copyright described in subsection (1) as of the date the country becomes a WTO Member.

26. (3) Performer's performances before Jan. 1, 1996

Where a performer's performance takes place before January 1, 1996 in a country that is a WTO Member, the performer has, of January 1, 1996, the sole right to do and authorize the act described in paragraph (1)(b).

26. (4) Where country joins WTO after Jan. 1, 1996

Where a performer's performance takes place before January 1, 1996 in a country that becomes a WTO Member on or after January 1, 1996, the performer has the rights described in subsection (3) as of the date the country becomes a WTO Member.

Bill C-32 1996, s. 14

1986

The government agrees with this recommendation in principle. The rights to be granted performers under the Act will be defined at a later stage as will the conditions and mechanisms for extending these rights to nationals of foreign countries as suggested in recommendation 72

GRCRC 72, p.11

The government agrees with this recommendation in principle. Recommendation 73 will be subject to recommendation 15 (regarding employees), on which we have already commented.

GRCRC 73, p.11

The government agrees with this recommendation in principle.

GRCRC 74, p.11

1985

The protection of performers' performances should be extended to nationals of those foreign countries which provide similar protection to Canadians.

CRC 72, p.56

Performers should be the first owners of the copyright in their performances.

CRC 73, p.56

Performer's performances should be protected for a term of at least 20 years from the time of fixation of the performance.

CRC 74, p.57

1984

In view of the problems identified it has been decided that the unauthorized recording of performances for commercial gain or the use of such unauthorized recordings for that purpose will be made an offense. This will protect performers from those who seek to interfere with the legitimate business of providing public entertainment by means of records and tapes. However, performers will not be provided with copyright in their performances.

GT p.12

1977

That, subject to resolving difficulties of viable collective mechanisms, revenue sharing and multiple licensing, a right in performances by Canadian performers be provided in any new *Copyright Act*.
That the exclusive rights granted to a performer be:

- (a) to make a recording of a performance;
- (b) to reproduce recordings of a performance;
- (c) to broadcast and perform in public a performance.

That the term of protection be 20 years calculated from the date of the first fixation of the performance.

CC p.117

14.01 (2) Interpretation

For the purpose of paragraph (1)(c), persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public and a communication intended to be received exclusively by such persons is a communication to the public.

S.C. 1994, c. 47, s. 58

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

2.4 (1) Communication to the public by telecommunication

For purposes of communication to the public by telecommunication,

- (a) persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public,

and a communication intended to be received exclusively by such persons is a communication to the public;

Bill C-32 1996, s. 2

14.01 (3) Restriction

For the purpose of paragraph (1)(c), a person whose only act in respect of the communication of a performer's performance to the public consists of providing the means of telecommunication necessary for another person to so communicate the performer's performance does not communicate that performer's performance to the public.

S.C. 1994, c. 47, s. 58

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

2.4 (1) Communication to the public by telecommunication

- (b) a person whose only act in respect of communication of a work or other subject-matter to the public consists of providing the means of telecommunication necessary for another person to so communicate the work or other subject-matter does not communicate that work or other subject-matter to the public; and

Bill C-32 1996, s. 2

14.01 (4) Performer's rights (pre-WTO performances)

Where a performer's performance took place in a country before the later of the day on which this section comes into force and the day on which that country becomes a WTO Member, the performer has, commencing on the later of those two days, the sole right described in paragraph (1)(b) and the sole right to authorize any such act.

S.C. 1994, c. 47, s. 58

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

14.01 (5) Terms of performer's rights

The rights conferred by this section subsist for the remainder of the calendar year in which the performer's performance takes place and a period of fifty years following the end of that calendar year.

S.C. 1994, c. 47, s. 58

s. 14.01 PERFORMER'S RIGHTS

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

Term of Rights

23. (1) Terms of right

Subject to this Act, the rights conferred by sections 15, 18 and 21 terminate fifty years after the end of the calendar year in which

(a) in the case of a performer's performance,

- i - its fixation in a sound recording, or
- ii - its performance, if it were not fixed in a sound recording,

occurred;

23. (2) Term of right to remuneration

The rights to remuneration conferred on performers and makers by section 19 have the same terms, respectively, as those provided by paragraphs (1)(a) and (b).

23. (3) Application of subsections (1) & (2)

Subsections (1) and (2) apply whether the fixation, performance or broadcast occurred before or after the coming into force of this Part.

23. (4) Berne Convention countries, Rome Convention countries, WTO Members

Where the performer's performance, sound recording or communication signal meets the requirements set out in section 15, 18 or 21, as the case may be, a country that becomes a Berne Convention country, a Rome Convention country or a WTO Member after the date of the fixation, performance or broadcast is, as of becoming a Berne Convention country, Rome Convention country or WTO Member, as the case may be, deemed to have been such at the date of fixation, performance or broadcast.

23. (5) Where term of protection expired

Subsection (4) does not confer any protection in Canada where the term of protection in the country referred to in that subsection had expired before that country became a Berne Convention country, Rome Convention country or WTO Member, as the case may be.

26. (5) Term of performer's rights

The rights conferred by this section subsist for the remainder of the calendar year in which the performer's performance takes place and a period fifty years following the end of that calendar year.

Bill C-32 1996, s. 14

1986

The government agrees with this recommendation in principle.

GRCRC 74, p.11

1985

Performers' performances should be protected for a term of at least 20 years from the time of fixation of the performance.

CRC 74, p.57

1977

That the term of protection be 20 years calculated from the date of the first fixation of the performance.

CC p.117

14.01 (6) Assignment of right by performer

Subsection 13(4) and 14(3) apply in respect of a performer's right conferred by this Act, in the same way that they apply in respect of assignment of copyright and grants of interests in copyright by licence.

S.C. 1994, c. 47, s. 58

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

26. (6) Assignment of rights

Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of a performer's rights conferred by this section.

Bill C-32 1996, s. 14

14.01 (7) Limitation

No assignment of a performer's right conferred by this Act, and no grant of an interest in such a right by licence, affects the right of the performer

(a) to prevent the reproduction of

(i) any fixation of the performer's performance, or any reproduction of such a fixation, and

(ii) any substantial part of such a fixation or reproduction,

where the fixation was made without the performer's consent; and

(b) to prevent the importation into Canada, for sale or hire, of any fixation of the performer's performance, or any reproduction of such a fixation, that to the knowledge of the importer was made without the performer's consent.

R.S. 1994, c. 47, s.58

1996

Section 14.01 of the Act and the heading before it are repealed.

Bill C-32 1996, s. 12

26. (7) Limitations

Notwithstanding an assignment of a performer's rights conferred by this section, the performer, as well as the assignee may

(a) prevent the reproduction of

i - any fixation of the performer's performance, or

ii - any substantial part of such a fixation,
where the fixation was made without the performer's consent or the assignee's consent; and

(b) prevent the importation of any fixation of the performer's performance, or any reproduction of such a fixation, that the importer knows or ought to know was made without the performer's consent or the assignee's consent.

Bill C-32 1996, s. 14

MORAL RIGHTS

S.C. 1988, c. 15;
R.S. 1985 (1988), c. 10 (4th Supp.)

14.1 (1) Moral Rights

The author of a work has, subject to section [18.2] ¹ 28.2, the right to the integrity of the work and, in connection with an act mentioned in [subsection 3. (1)] ¹ section 3, the right where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

Bill C-60 1987, s. 4 ¹;
S.C. 1988, c. 15, s. 4 ¹;
R.S. 1985 (1988), c. 10 (4th Supp.) s. 4

1931-1988

14. (4) Author's right to restrain acts prejudicial to his honour or reputation

Independently of the author's copyright, and even after the assignment, either wholly or partially, of the [said] ¹ ^{II} ^{III} copyright, the author [shall have] ¹ ^{II} has the right to claim authorship of the work, as well as the right to restrain any distortion, mutilation or other modification of the [said] ¹ ^{II} work [which] ¹ ^{II} that would be prejudicial to his honour or reputation.

S.C. 1931, c. 8, s. 5 ¹;
R.S. 1952, c. C-55, s. 12(7) ^{II};
R.S. 1970, c. C-30, s. 12(7) ^{III};
R.S. 1985, c. C-42, s. 14(4)

1986

The government agrees in principle with these recommendations.

GRCRC 2, 6., 7, p.2

The government agrees in principle with this recommendation. However, recommendation 5 will not extend to works for which a blanket licence has been granted by a collective society of copyright owners so as not to oblige users to obtain a second authorization for works that such societies have been assigned to administer.

GRCRC 5, p.2

The government agrees with this recommendation (14). However, it will study whether the term "employee" should be denied in the Act, as suggested by the Sub-Committee in recommendation 16.

GRCRC 14, p.4

The government agrees with this recommendation (39) in principle. Recommendation 39 will be subject to the reservation made in our response to recommendation 5 (blanket license to collective societies).

GRCRC 39, p.7

1985

The revised law should recognize moral rights as an integral part of copyright.

CRC 2, p.8

The new Act should provide a moral right to authorize the use of any protected work in association with products, services, causes or institutions.

CRC 5, p.8

The revised Act should provide a moral right to prevent any modification of the original of an artistic work, including an element of a limited edition thereof, even in the absence of evidence of prejudice to the author's honour or reputation.

CRC 6, p.8

The right should be limited in order to permit the physical relocation of the work, the alteration of a structure containing the work, and legitimate restoration and preservation activities.

CRC 7, p.8

The revised law should recognize that corporate and co-operative entities can hold and exercise full rights, including moral rights.

CRC 14, p.13

The full range of economic and moral rights should apply to musical works, including the new moral right of endorsement.

CRC 39, p.31

1984

The two moral rights granted in Canada are those known as "the right to claim authorship" and "the right of integrity".

i - Right to Claim Authorship

This right will allow a creator to: claim authorship of a work, which means the right to have his or her name appropriately used in conjunction with the work; use a pseudonym or remain anonymous with respect to his or her work; restrain others from claiming authorship of his or her work. The above rights will be qualified by allowing them to be waived by an author if so desired.

ii - Right of Integrity

Creators have the right to restrain any distortion, mutilation, or other modification of their work that would be prejudicial to their honour or reputation. The revised Act will retain this right... and reflect the similar provisions of the Rome Text of the Berne Convention... However, a subsequent copyright owner will be able to make such changes as are reasonable in adapting the work to another medium or form or to another

length or duration if the author transfers the right to adapt to a subsequent owner.

The moral rights provisions will be amended to protect artists when the unique original of an artistic work has been modified without consent. To prevent possible misuse... it will be made clear that the right does not extend to or encompass the physical relocation of the work or the physical means by which the work is displayed, exhibited or otherwise made perceptible and that any alteration, destruction or change in the structure containing the work that results in a distortion, mutilation or modification of the work is not actionable. In addition, legitimate restoration or preservation activities will not be actionable.

GT pp. 26-27

When the author is a corporate or other legal entity, the same moral rights will be accorded to the corporate author as pertains to a human author.

GT p.33

1977

That the following moral rights be provided in Canadian copyright law:

(a) the author's right to enjoy respect for his authorship, including a right to restrain false attribution of authorship and a right to restrain the circulation of copies of the work under his real name where he has chosen to use a pseudonym or to remain anonymous;

(b) the author's right to restrain any distortion, mutilation or other modification of his work, or any action in relation to said work, which would be prejudicial to his honour or reputation;

(c) the author's right to restrain any distortion, mutilation, modification or any other action in relation to the original of an artistic work in the nature of sculpture, a painting, a drawing or an engraving;

(d) as corollaries to the right to publish: the author's right to stop publication, despite previous authorization, provided that the publisher receives compensation; and a right, after publication, to withdraw works from circulation by having the first option to buy back copies available for sale.

That moral rights be attached to the person of an author, but that they may be transmitted on the death of the author to his heirs or, through testamentary disposition, to third party

CC p.59

14.1 (2) No assignment of moral rights

Moral rights may not be assigned but may be waived in whole or in part.

S.C. 1988, c. 15, s. 4;

R.S. 1985 (1988), c. 10 (4th Supp.) s. 4

1987

Moral rights may not be assigned but the author of a work may waive the rights or any of them.

Bill C-60 1987, 4, p.2

14.1 (3) [Waiver not deemed] 1 No waiver by assignment

An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights.

Bill C-60 1987, s. 4 1;

S.C. 1988, c. 15, s. 4 1;

R.S. 1985 (1988), c. 10 (4th Supp.) s. 4

14.1 (4) Effect of waiver

Where a waiver of any moral right is made in favour of an owner or a licensee of copyright, it may be invoked by any person authorized by the owner or licensee to use the work, unless there is an indication to the contrary in the waiver.

Bill C-60 1987, s. 4;

S.C. 1988, c. 15, s. 4;

R.S. 1985 (1988), c. 10 (4th Supp.) s. 4

14.2 (1) Term

Moral rights in respect of a work subsist for the same term as the copyright in the work.

S.C. 1988, c. 15, s. 4;

R.S. 1985 (1988), c. 10 (4th Supp.) s. 4

1986

The government agrees in principle with this recommendation.

GRCRC 4, p.2

1985

The term of protection for moral rights should be the same as the term of protection for economic rights.

CRC 4, p.8

1984

Under the new Act... authors' moral rights will last for the same term as their economic rights since there is not always a clear distinction between the two.

GT p.58

1977

That the term of protection for moral rights be the same as for pecuniary rights, and accorded to original literary, dramatic, musical and artistic works.

CC p.59

14.2 (2) Succession

The moral rights in respect of a work pass, on the death of its author, to:

(a) the person to whom those rights are specifically bequeathed;

(b) where there is no specific bequest of those moral rights and the author dies testate in respect of the

copyright in the work, the person to whom that copyright is bequeathed; or

(c) where there is no person described in paragraph (a) or (b), the person entitled to any other property in respect of which the author dies intestate.

S.C. 1988, c. 15, s. 4;
R.S. 1985 (1988), c. 10 (4th Supp.) s. 4

1996

Section 14.2 of the Act is amended by adding the following after subsection (2):

14.2 (3) Subsequent succession

Subsection (2) applies, with such modifications as the circumstances require, on the death of any person who holds moral rights.

Bill C-32 1996, s. 13

Compensation for Acts done before
Recognition of Copyright or Moral Rights

33. (1) Certain rights and interests
protected

Notwithstanding subsections 27(1), (2) and (4) and sections 27.1, 28.1 and 28.2, where a person has, before the later of January 1, 1996 and the day on which a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, doing an act that would have infringed a copyright owner's copyright or an author's moral rights had that country been a treaty country, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the later of those days

is not prejudiced or diminished by reason only that that country has become a treaty country, except as provided by an order of the Board made under subsection 78(3).

33. (2) Compensation

Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or author, if and when that copyright owner or the author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 78(3).

Bill C-32 1996, s. 19

Repealed

S.C. 1993, c. 44, s. 61

COMPULSORY LICENSES

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

15. Repealed [Where owner of copyright compelled to grant licence to reproduce]

S.C. 1993, c. 44, s. 61

1921-1993

15. [When owner] ^{I II III} Where owner of copyright compelled to grant licence to reproduce

[If, at any time] ^{I II} Where, at any time after the death of the author of a literary dramatic or musical work [which has been] ^{I II} that has been published or performed in public, a complaint is made to the Governor in Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason [of such refusal] ^{I II III IV} of that refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Governor in Council may think fit.

S.C. 1921, c. 24, s. 12 ^I;
R.S. 1927, c. C-32, s. 13 ^{II};
R.S. 1952, c. C-55, s. 13 ^{III};
R.S. 1970, c. C-30, s. 13 ^{IV};
R.S. 1985, c. C-42, s. 15

1986

The government accepts this recommendation.

GRCRC 26, p.5

The government accepts this recommendation.

GRCRC 27, p.5

The government agrees with the principle outlined in recommendation 102.

GRCRC 102, p.15

1985

The revised law should not provide for a compulsory licence to translate literary works.

CRC 26, p.23

The reproduction, public performance and printing compulsory licences should not be retained in the revised law.

CRC 27, p.23

The right of retransmission to be provided in the revised law should be limited by a compulsory licence, with tariffs to be established by the Copyright Appeal Board.

CRC 102, p.81

1984

Licences will be abolished in the new Act.

GT p.36

Compulsory licensing provisions, based on those in the UCC will be introduced into the new *Copyright Act*.

GT p.38

1977

That sections 7 and 13 be repealed.

CC p.76

Repealed

S.C. 1994, c. 47, s. 59

LICENSES

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

16. (1) Repealed [Application for licence to print book in Canada by others than owner]

S.C. 1994, c. 47, s. 59

1921-1994

16. (1) Application for licence to print book in Canada by others than owner

Any person may apply to the Minister for a licence to print and publish in Canada any book wherein copyright subsists, if at any time after publication and within the duration of the copyright the owner of the copyright fails

(a) to print [the said book] ^{I II III} the book or [cause the same to be printed in Canada.] ^{I II III} cause it to be printed in Canada, [or] ^{III IV V}

(b) to supply by means of copies so printed the reasonable demands of the Canadian market for such book.

S.C. 1921, c. 24, s. 13(1) ^I;
R.S. 1927, c. C-32, s. 13(1) ^{II};
R.S. 1952, c. C-55, s. 14(1) ^{III};
R.S. 1970, c. C-30, s. 14(1) ^{IV};
R.S. 1985, c. C-42, s. 16(1) ^V

1986

The government agrees with this recommendation. Such licences will be issued subject to the conditions stated in *From Gutenberg to Telidon*, particularly the following conditions:

- proof to the satisfaction of the Board, that a reasonable effort has been made to locate the copyright owner;
- payment of royalties approximating what would be negotiated in the marketplace;
- proof that the work against which the licence is sought has been published.

GRCRC 28, p.5

1985

Provision should be made in the revised law for the Copyright Appeal Board to issue non-exclusive licences where a copyright owner cannot be located.

CRC 28, p.24

1984

The printing clauses will be deleted from the *Copyright Act* because no licences have been issued; they may conflict with our obligations under UCC; and the manufacturing clause of the *American Copyright Act* specifically exempts Canada.

GT p.37

Where copyright owners cannot be located and use of their work could constitute infringement, a revised Copyright Appeal Board will be able to grant a non-exclusive licence to use the work in a specified manner. The licence will be obtainable upon certain conditions:

- proof to the satisfaction of the Board, that a reasonable effort has been made to locate the copyright owner;
- payment of royalties approximating what would be negotiated in the marketplace;
- proof that the work against which the licence is sought has been published.

GT p.37

1977

That sections 14, 15 and 16 be repealed.

CC p.78

That a non-exclusive licence to use a work be obtainable upon application to the Copyright Tribunal and granted on such terms and conditions as the Tribunal may determine providing:

- (a) the author of the work has died;
- (b) the applicant wishes to use the work as it had previously been used with the author's consent and has not been able to locate the owner of the copyright in the work;
- (c) the applicant has complied with the criteria established by the Tribunal for determining the adequacy of the applicant's search for the owner;
- (d) the applicant has complied with all terms and conditions imposed by the Tribunal; and,
- (e) appropriate arrangements have been made for payment of royalties should the copyright owner be located.

That the granting of such a licence not constitute infringement of the copyright in the work.

That the Copyright Tribunal have the sole discretionary power to issue such a licence.

That the exception not affect or modify any other compulsory licensing provisions.

CC pp.175-176

16. (2) Repealed [Form stating retail price]

S.C. 1994, c. 47, s. 59

1921-1994

16. (2) Form stating retail price

(Such application may be in such form) ^I An application under subsection (1) may be in

such form as may be prescribed by the regulations and shall state the proposed retail price of the edition of [such] ^I the book proposed to be printed.

S.C. 1921, c. 24, s. 13(2) ^I;

R.S. 1927, c. C-32, s. 14(2) ^I;

R.S. 1952, c. C-55, s. 14(2) ^I;

R.S. 1970, c. C-30, s. 14(2);

R.S. 1985, c. C-42, s. 16(2)

16. (3) Repealed [Deposit with application]

S.C. 1994, c. 47, s. 59

1921-1994

16. (3) Deposit with application

Every applicant for a licence under this section shall, with his application, deposit with the Minister an amount not less than ten per cent of the retail selling price of one thousand copies [of such book and] ^I ^{II} ^{III} of the book and not less than one hundred dollars and [such amount shall] ^I ^{II} ^{III} ^{IV} that amount shall, [if such application] ^I ^{II} ^{III} if the application is unsuccessful, be returned [to such applicant] ^I ^{II} ^{III} to the applicant less such deductions for fees as may be authorized by the regulations.

S.C. 1921, c. 24, s. 13(3) ^I;

R.S. 1927, c. C-32, s. 14(3) ^{II};

R.S. 1952, c. C-55, s. 14(3) ^{III};

R.S. 1970, c. C-30, s. 14(3) ^{IV};

R.S. 1985, c. C-42, s. 16(3)

16. (4) Repealed [Notice to owner]

S.C. 1994, c. 47, s. 59

1921-1994

16. (4) Notice to owner

Notice [of such application] ^I of the application shall forthwith be communicated by the Minister to the owner of the copyright in such manner as may be prescribed by the regulations.

S.C. 1921, c. 24, s. 13(4) ^I;

R.S. 1927, c. C-32, s. 14(4) ^I;

R.S. 1952, c. C-55, s. 14(4) ^I;

R.S. 1970, c. C-30, s. 14(4);

R.S. 1985, c. C-42, s. 16(4)

17. (1) Repealed [Where owner does not proceed, application may be granted]

S.C. 1994, c. 47, s. 59

1921-1994

17. (1) [If owner] ^I ^{II} Where owner does not proceed, application may be granted

[If the owner of] ^I ^{II} ^{III} Where the owner of the copyright [shall not within] ^I ^{II} ^{III} does not [within a delay] ^I ^{II} ^{III} ^{IV} within a time to be fixed by the regulations after communication [of such notice give] ^I ^{II} ^{III} [of the notice give] ^{IV} of the notice mentioned in subsection 16(4) give an undertaking, with such security as may be prescribed by the regulations, to procure within two months after the date [of such communication] ^I ^{II} ^{III} ^{IV} of the communication the printing in Canada of an edition of not less than one thousand

copies [of such book,] ^{I II III IV} of the book, the Minister in his discretion may grant to the applicant a licence to print and publish [such book] ^{I II III} the book [upon terms to be] ^{I II III IV} on terms to be determined by the Minister after hearing the parties or affording them such opportunity to be heard as may be fixed by the regulations.

S.C. 1921, c. 24, s. 13(5) ^I;
R.S. 1927, c. C-32, s. 14(5) ^{II};
R.S. 1952, c. C-55, s. 14(5) ^{III};
R.S. 1970, c. C-30, s. 14(5) ^{IV};
R.S. 1985, c. C-42, s. 17(1)

17. (2) Repealed [Where two or more persons apply for a licence]

S.C. 1994, c. 47, s. 59

1921-1994

17. (2) [License to highest or first applicant] ^I
Where two or more persons apply for a licence

Where two or more persons have applied for a licence [under this section,] ^{I II III IV} under section 16, the Minister shall award the licence to the applicant proposing the terms, in the opinion of the Minister, most advantageous to the author, and if there are two proposing terms equally advantageous to the author, to the applicant whose application was first received.

S.C. 1921, c. 24, s. 13(6) ^I;
R.S. 1927, c. C-32, s. 14(6) ^{II};
R.S. 1952, c. C-55, s. 14(6) ^{III};
R.S. 1970, c. C-30, s. 14(6) ^{IV};
R.S. 1985, c. C-42, s. 17(2)

18. (1) Repealed [Rights of licensee]

S.C. 1994, c. 47, s. 59

1921-1994

18. (1) Rights of licensee

[Such licence when issued shall entitle the] ^{I II}
[Such licence when issued entitles the] ^{III IV} A licence issued under section 17 entitles the licensee to the sole right to print and publish such book in Canada during such term, not exceeding five years or for such edition or editions as may be fixed by the licence.

S.C. 1921, c. 24, s. 13(7) ^I;
R.S. 1927, c. C-32, s. 14(7) ^{II};
R.S. 1952, c. C-55, s. 14(7) ^{III};
R.S. 1970, c. C-30, s. 14(7) ^{IV};
R.S. 1985, c. C-42, s. 18(1)

18. (2) Repealed [Royalty]

S.C. 1994, c. 47, s. 59

1921-1994

18. (2) Royalty

[Such licensee shall] ^I The licensee shall pay a royalty on the retail selling price of every copy [of such book] ^I of the book printed

under such licence, at a rate to be determined by the Minister.

S.C. 1921, c. 24, s. 13(8) ^I;
R.S. 1927, c. C-32, s. 14(8) ^I;
R.S. 1952, c. C-55, s. 14(8) ^I;
R.S. 1970, c. C-30, s. 14(8) ^I;
R.S. 1985, c. C-42, s. 18(2)

18. (3) Repealed [Undertaking by licensee]

S.C. 1994, c. 47, s. 59

1921-1994

18. (3) Undertaking by licensee

The acceptance of a licence for a book shall imply an undertaking by the licensee

(a) to print and publish in Canada an edition of the book of not less than one thousand copies, at the price specified in the licence, and within two months from the issue of the licence; and

(b) [to print the same from] ^I to print the book from the last authorized edition of the book in such manner as may be prescribed by the Minister, in full, without abbreviation or alteration of the letterpress, and without varying, adding to, or diminishing the main design of such of the prints, engravings, maps, charts, musical compositions or photographs contained in the book as the licensee reproduces.

S.C. 1921, c. 24, s. 13(9) ^I;
R.S. 1927, c. C-32, s. 14(9) ^I;
R.S. 1952, c. C-55, s. 14(9) ^I;
R.S. 1970, c. C-30, s. 14(9) ^I;
R.S. 1985, c. C-42, s. 18(3)

18. (4) Repealed [Endorsements on book]

S.C. 1994, c. 47, s. 59

1921-1994

18. (4) [Indorsements on book] ^{I II III}
Endorsements on book

Every book published under a license [under this section shall] ^{I II III IV} issued under section 17 shall have printed or otherwise impressed [upon it the] ^{I II III IV} on it the words "Printed under Canadian licence", [and] ^{I II III} the calendar year [of such licence] ^{I II III IV} of the licence and the retail selling price [of such book.] ^{I II III IV} of the book.

S.C. 1921, c. 24, s. 13(10) ^I;
R.S. 1927, c. C-32, s. 14(10) ^{II};
R.S. 1952, c. C-55, s. 14(10) ^{III};
R.S. 1970, c. C-30, s. 14(10) ^{IV};
R.S. 1985, c. C-42, s. 18(4)

19. Repealed [Cancellation of licence]

Repealed S.C. 1994, c. 47, s. 59

1921-1994

19. [no heading] ^{I II III} Cancellation of licence

[If the Minister on complaint is] ^{I II} Where the Minister on complaint is satisfied that

the licensee does not print and keep on sale in Canada a number of the copies of the book sufficient [to supply the reasonable demands, he shall,] ^{I II III IV} to supply the reasonable demands of the Canadian market, the Minister shall, after giving the licensee an opportunity of being heard to show cause against the cancellation, cancel the license.

S.C. 1921, c. 24, s. 13(11) ^I;
R.S. 1927, c. C-32, s. 14(11) ^{II};
R.S. 1952, c. C-55, s. 14(11) ^{III};
R.S. 1970, c. C-30, s. 14(11) ^{IV};
R.S. 1985, c. C-42, s. 19

20. Repealed [Suppression by copyright owner]

S.C. 1994, c. 47, s. 59

1921-1994

20. [no heading] ^{I II III} Suppression by copyright owner

[If a book for which a licence has been issued is suppressed by] ^{I II} [Where a book for which a licence has been issued is suppressed by] ^{III IV} Where a book for which a licence has been issued under section 17 is suppressed by the owner of the copyright, the licensee shall not print the book or any further copies thereof, but may sell any copies already printed, and may complete and sell any copies [in process] ^{I II III IV} in the process of being printed under [his licence] ^{I II III IV} the licence, but the owner of the copyright [shall be] ^{I II} is entitled to buy all such copies at the cost of printing them.

S.C. 1921, c. 24, s. 13(12) ^I;
R.S. 1927, c. C-32, s. 14(12) ^{II};
R.S. 1952, c. C-55, s. 14(12) ^{III};
R.S. 1970, c. C-30, s. 14(12) ^{IV};
R.S. 1985, c. C-42, s. 20

21. Repealed [Second or later edition]

S.C. 1994, c. 47, s. 59

1921-1994

21. [no heading] ^{I II III} Second or later edition

[Nothing in this section shall authorize the] ^I ^{II} [Nothing in this section authorizes the] ^{III IV} Nothing in sections 16 to 20 authorizes the granting, without the consent of the author, of a licence to publish a second or succeeding edition of any work [whereof such author has published one] ^{I II III IV} if the author has published one or more editions in Canada.

S.C. 1921, c. 24, s. 13(13) ^I;
R.S. 1927, c. C-32, s. 14(13) ^{II};
R.S. 1952, c. C-55, s. 14(13) ^{III};
R.S. 1970, c. C-30, s. 14(12) ^{IV};
R.S. 1985, c. C-42, s. 21

Repealed

S.C. 1994, c. 47, s. 59

SERIAL LICENCES

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

22. (1) Repealed [Licence to publish book in serial form]

S.C. 1994, c. 47, s. 59

1921-1994

22. (1) Licence to publish book in serial form

[If the publication of] ^{I II} Where the publication of a book is lawfully begun as a serial elsewhere than [in His Majesty's Dominions] ^{I II} [in Her Majesty's Dominions] ^{III} in Her Majesty's Realms and Territories or a foreign country [to which subsection one of section four of this Act applies,] ^I to which this Act applies, and the owner of the copyright has refused to grant a licence to any person in Canada, being a publisher of a periodical, to publish [such book in] ^{I II III IV} the book in serial form, a licence may in the discretion of the Minister be granted to any person in Canada, being the publisher of a periodical, to publish [such book once in serial form] ^{I II III IV} the book once in serial form (in the said periodical provided, that a licence shall not) ^{I II} [in the said periodical, but a licence shall not] ^{I II III IV} in the periodical, but a licence shall not be granted to more than [one such publisher] ^{I II III IV} one publisher in the same city, town or place.

S.C. 1921, c. 24, s. 14(1) ^I;
R.S. 1927, c. C-32, s. 15(1) ^{II};
R.S. 1952, c. C-55, s. 15(1) ^{III};
R.S. 1970, c. C-30, s. 15(1) ^{IV};
R.S. 1985, c. C-42, s. 22(1)

22. (2) Repealed [Application]

S.C. 1994, c. 47, s. 59

1921-1994

22. (2) Application

[Such licence may be issued by the Minister on application] ^I A licence may be issued by the Minister under subsection (1) on application [by the publisher in] ^I by a publisher in such form as may be prescribed by the regulations.

S.C. 1921, c. 24, s. 14(2) ^I;
R.S. 1927, c. C-32, s. 15(2) ^I;
R.S. 1952, c. C-55, s. 15(2) ^I;
R.S. 1970, c. C-30, s. 15(2) ^I;
R.S. 1985, c. C-42, s. 22(2)

22. (3) Repealed [Draft contract]

S.C. 1994, c. 47, s. 59

1921-1994

22. (3) Draft contract

The application for a licence under this section may be in the form of a draft contract between the licensee and the owner of the copyright.

S.C. 1921, c. 24, s. 14(5);
R.S. 1927, c. C-32, s. 15(5);
R.S. 1952, c. C-55, s. 15(5);
R.S. 1970, c. C-30, s. 15(5);
R.S. 1985, c. C-42, s. 22(3)

23. (1) Repealed [Terms of licence]

S.C. 1994, c. 47, s. 59

1921-1994

23. (1) Terms of licence

[Such licence may be upon the terms proposed in such draft contract or upon terms prescribed by the regulations;] ^{I II III IV} A licence issued under section 22 may be on the terms proposed in the draft contract, or on terms prescribed by the regulations; [provided that before such terms are settled the owner of the copyright shall be entitled to being fully heard in] ^{I II} but before [such terms] ^{III} ^{IV} the terms are settled the owner of the copyright is entitled to [being fully] ^{III} be fully heard in support of any contentions or representations he may deem it in his interests to make.

S.C. 1921, c. 24, s. 14(6) ^I;
R.S. 1927, c. C-32, s. 15(6) ^{II};
R.S. 1952, c. C-55, s. 15(6) ^{III};
R.S. 1970, c. C-30, s. 15(6) ^{IV};
R.S. 1985, c. C-42, s. 23(1)

23. (2) Repealed [Deposit with application]

S.C. 1994, c. 47, s. 59

1921-1994

23. (2) Deposit with application

[The applicant for a licence under this section shall] with his application] ^I An applicant for a licence under section 22 shall with the application deposit such amount of money as may be required by the regulations, and such money shall on the issue of the licence be paid forthwith to the owner of the copyright.

S.C. 1921, c. 24, s. 14(7) ^I;
R.S. 1927, c. C-32, s. 15(7) ^I;
R.S. 1952, c. C-55, s. 15(7) ^I;
R.S. 1970, c. C-30, s. 15(7) ^I;
R.S. 1985, c. C-42, s. 23(2)

23. (3) Repealed [Importation of magazines, etc., not prohibited]

S.C. 1994, c. 47, s. 59

1921-1994

23. (3) - [no heading] ^I Importation of magazines, etc., not prohibited

Nothing in this Act [shall prohibit] ^{I II} prohibits the importation and circulation of newspapers, magazines and periodicals [which together with] ^{I II} that together with foreign original matter contain serials licensed to be printed and published in Canada.

S.C. 1921, c. 24, s. 14(8) ^I;
R.S. 1927, c. C-32, s. 15(8) ^{II};
R.S. 1952, c. C-55, s. 15(8);
R.S. 1970, c. C-30, s. 15(8);
R.S. 1985, c. C-42, s. 23(3)

24. Repealed [Definitions]

S.C. 1994, c. 47, s. 59

1985-1994

24. Definitions

In this section and sections 22 and 23, "owner of a copyright" includes the owner of the right to publish in serial form as distinct and separate from other rights of publication;

"serial" means any book that is first published in separate articles or as a tale or short story complete in one issue in a newspaper or periodical.

R.S. 1985, c. C-42, s. 24

1921-1985

15. (3) "Serial" defined

The term "serial" under this section [shall mean and refer] ^{I II} means and refers to any book [which is first] ^{I II} that is first published in separate articles or as a tale or short story complete in one issue in a newspaper or periodical.

S.C. 1921, c. 24, s. 14(3) ^I;
R.S. 1927, c. C-32, s. 15(3) ^{II};
R.S. 1952, c. C-55, s. 15(3);
R.S. 1970, c. C-30, s. 15(3)

15. (4) "Owner of a copyright"

The term "owner of copyright" under this section may mean the owner of the right to publish in serial form as distinct and separate from other rights of publication.

S.C. 1921, c. 24, s. 14(4);
R.S. 1927, c. C-32, s. 15(4);
R.S. 1952, c. C-55, s. 15(4);
R.S. 1970, c. C-30, s. 15(4)

25. (1) Repealed [Licence deemed a contract]

S.C. 1994, c. 47, s. 59

1921-1994

25. (1) License deemed a contract [and licence subrogated to rights of owner] ^I

Every license issued under [sections twelve, thirteen or fourteen shall] ^I [the last three preceding sections shall] ^{II} [sections 13, 14 and 15 shall] ^{III IV} [sections 15, 17 and 22 shall] ^V sections 17 and 22 shall be deemed to constitute a contract,

on the terms embodied [in such licence or] ^{I II III IV} in the licence or in this Act, between the owner of the copyright and the licensee, and the licensee [shall be entitled to] ^{I II} is entitled to the like remedies as in the case of a contract. [the licensee shall have the same power and right to take any action or any legal proceedings to prevent or restrain any infringement of copyright which affects the rights of such licensee or to recover compensation or damages for any such infringement that the owner of the copyright would have for an infringement of his copyright] ^I.

S.C. 1921, c. 24, s. 15(1) ^I;
R.S. 1927, c. C-32, s. 16(1) ^{II};
R.S. 1952, c. C-55, s. 16(1) ^{III};
R.S. 1970, c. C-30, s. 16(1) ^{IV};
R.S. 1985, c. C-42, s. 25(1) ^V;
S.C. 1993, c. 44, s. 62

25. (2) Repealed [Licensee to have right of action]

S.C. 1994, c. 47, s. 59

1927-1994

25. (2) [no separate provision nor margin heading] ^I
Licensee to have right of action

[The licensee] ^{I II III IV} A licensee [shall have the] ^{I II} has the same power and right to take any action or any legal proceedings to prevent or restrain any infringement of copyright [which affects] ^{I II} that affects the rights of [such licensee or] ^{I II III IV} the licensee or to recover compensation or damages for [any such infringement] ^{I II III IV} any infringement that the owner of the copyright would have for an infringement of his copyright.

S.C. 1921, c. 24, s. 15(1) ^I;
R.S. 1927, c. C-32, s. 16(2) ^{II};
R.S. 1952, c. C-55, s. 16(2) ^{III};
R.S. 1970, c. C-30, s. 16(2) ^{IV};
R.S. 1985, c. C-42, s. 25(2)

25. (3) Repealed [Licence declared forfeit on default]

S.C. 1994, c. 47, s. 59

1921-1994

25. (3) Licence declared forfeited on default

The owner of the copyright, [shall] ^{I II} in addition to any other remedy in respect [to such licence] ^{I II III IV V} of a licence as a contract, [be entitled,] ^{I II} is entitled, in case of default by the licensee in observing the terms of [such] ^{I II III IV V} the licence on [petition to the Exchequer Court of Canada,] ^{I II III IV} application to the Federal Court, to have [such] ^{I II III IV V} the licence canceled

S.C. 1921, c. 24, s. 15(2) ^I;
R.S. 1927, c. C-32, s. 16(3) ^{II};
R.S. 1952, c. C-55, s. 16(3) ^{III};
R.S. 1970, c. C-30, s. 16(3) ^{IV};
R.S. 1970 (1972), c. 10 (2nd Supp.), s. 65 & Sch. II (10) ^V;
R.S. 1985, c. C-42, s. 25(3)

25. (4) Repealed [Particulars in Register]

S.C. 1994, c. 47, s. 59

1921-1994

25. (4) [Particulars entered] ^{I II III} Particulars in Register

Particulars of [such cancellation may] ^{I II III IV} a cancellation under subsection (3)] may be entered on the Register of Copyrights.

S.C. 1921, c. 24, s. 15(3) ^I;
R.S. 1927, c. C-32, s. 16(4) ^{II};
R.S. 1952, c. C-55, s. 16(4) ^{III};
R.S. 1970, c. C-30, s. 16(4) ^{IV};
R.S. 1970 (1972), c. 10 (2nd Supp.), s. 65 & Sch. II (10) ^V;
R.S. 1985, c. C-42, s. 25(4)

26. (1) Repealed [Fees paid to Minister]

S.C. 1994, c. 47, s. 59

1921-1994

26. (1) [Fees paid to Department] ^{I II III} Fees paid to Minister

All moneys paid or payable by a licensee or applicant for a licence under [sections twelve, thirteen or fourteen shall] ^I [the three last preceding sections shall] ^{II} [sections 13, 14 and 15 shall] ^{III IV} [sections 15, 16 and 23 shall] ^V sections 16 and 23 shall be paid to the Minister.

S.C. 1921, c. 24, s. 15(4) ^I;
R.S. 1927, c. C-32, s. 16(5) ^{II};
R.S. 1952, c. C-55, s. 16(5) ^{III};
R.S. 1970, c. C-30, s. 16(5) ^{IV};
R.S. 1985, c. C-42, s. 26(1) ^V;
S.C. 1993, c. 44, s. 63(1)

26. (2) Repealed [Deposits and royalty paid to Minister]

S.C. 1994, c. 47, s. 59

1921-1994

26. (2) Deposits and royalty paid to Department

All moneys deposited by a successful applicant for a licence and all moneys due from time to time by way of royalty or otherwise from licensees [shall likewise be paid to] ^I shall be paid to the Minister and by him paid out to the persons entitled thereto.

S.C. 1921, c. 24, s. 15(4) ^I;
R.S. 1927, c. C-32, s. 16(6) ^I;
R.S. 1952, c. C-55, s. 16(6) ^I;
R.S. 1970, c. C-30, s. 16(6) ^I;
R.S. 1985, c. C-42, s. 26(2)

26. (3) Repealed [Payment of royalty stamped on book]

S.C. 1994, c. 47, s. 59

1921-1994

26. (3) Payment of royalty stamped on book

The Minister may by regulations require every copy of a book [upon which the] ^I on which the royalty has been duly paid to be suitably stamped or marked.

S.C. 1921, c. 24, s. 15(6) ^I;
R.S. 1927, c. C-32, s. 16(7) ^I;
R.S. 1952, c. C-55, s. 16(7) ^I;
R.S. 1970, c. C-30, s. 16(7) ^I;
R.S. 1985, c. C-42, s. 26(3)

26. (4) Repealed [Application of provisions regarding licences]

S.C. 1994, c. 47, s. 59

1993-1994

26. (4) Application of provisions regarding licences

Sections 16 to 24 apply only to a work the author of which is a Canadian citizen.

S.C. 1993, c. 44, s. 63(2)

1927-1993

26. (4) Application of provisions regarding licences

[This section and the two last preceding sections, shall not apply to] ^I [This section and sections 14 and 15 do not apply to] ^{II} ^{III} Sections 16 to 24 do not apply to any work the author of which is a British subject, other than a Canadian citizen, or the subject or citizen of a country which has adhered to the Convention and the Additional Protocol thereto set out [in the Second Schedule to this Act.] ^I [in the Second Schedule.] ^{II} in Schedule II

R.S. 1927, c. C-32, s. 16(8) ^I;
R.S. 1952, c. C-55, s. 16(8) ^{II};
R.S. 1970, c. C-30, s. 16(8) ^{III};
R.S. 1985, c. C-42, s. 26(4)

1923-1927

2. Application of provisions regarding licences and importation

Sections thirteen, fourteen, fifteen and twenty-seven of *The Copyright Act*, 1921, shall not apply to any work the author of which is a British Subject, other than a Canadian citizen, or the subject or citizen of a country which has adhered to the Convention and the additional protocol thereto set out in the second Schedule to the said Act.

S.C. 1923, c. 10 s. 2

INFRINGEMENT OF COPYRIGHT

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

1996

The heading before section 27 and sections 27 and 28 of the Act are replaced by the following:

PART III
INFRINGEMENT OF COPYRIGHT AND
MORAL RIGHTS AND EXCEPTIONS TO
INFRINGEMENT
Infringement of Copyright

Bill C-32 1996, s. 15

Interpretation

32.3 No right to equitable remuneration

For the purposes of sections 29 to 32.2, an act that does not infringe copyright does not give rise to a right to remuneration conferred by section 19.

Bill C-32 1996, s. 19

27. (1) Infringement of copyright

Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, [does anything the sole right to do which is by this Act conferred on the owner of the copyright:] ⁱ ⁱⁱ ⁱⁱⁱ does anything that, by this Act, only the owner of the copyright has the right to do.

S.C. 1921, c. 24, s 16(1) ⁱ;
R.S. 1927, c. C-32, s. 17(1) ⁱⁱ;
R.S. 1952, c. C-55, s. 17(1) ⁱⁱⁱ;
R.S., 1970, c. C-30, s 17(1);
R.S. 1985, c. C-42, s 27(1)

1921-1931

Exceptions

Provided that the following acts shall not constitute an infringement of copyright:

S.C. 1921, c. 24, s. 16(1);
R.S. 1927, c. C-32, s. 17(1);
S.C. 1931c. 8, s. 6 (vii)(viii)

1996

General

27. (1) Infringement generally

It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do.

Bill C-32 1996, s. 15

1984

Presently, it is an infringement to improperly authorize the exercise of any copyright owner's exclusive rights. This right will be retained.

GT p.19

27. (2) [Exceptions] ⁱ Acts not constituting infringement of copyright

The following acts do not constitute an infringement of copyright:

R.S. 1952, c. C-55, s. 17(2) ⁱ;
R.S., 1970, c. C-30, s 17(1);
R.S. 1985, c. C-42, s 27(2)

27. (2) (a) any fair dealing with any work for the purposes of private study or research;

S.C. 1993, c. 44, s. 64(1)

1996

29. Research or private study

Fair dealing for the purpose of research or private study does not infringe copyright.

Bill C-32 1996, s. 18

27. (2) (a.1) any fair dealing with any work for the purposes of criticism, review or newspaper summary, if

(i) the source, and

(ii) the author's name, if given in the source,

are mentioned;

S.C. 1993, c. 44, s. 64(1)

1921-1993

27. (2) (a) [For purposes of study] ⁱ

any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary;

S.C. 1921, c. 24, s 16(1)(i) ⁱ;
R.S. 1927, c. C-32, s. 17(1)(i) ⁱ;
R.S. 1952, c. C-55, s. 17(2)(a) ⁱ;
R.S., 1970, c. C-30, s 17(2)(a);
R.S. 1985, c. C-42, s 27(2)(a)

1996

29.1 Criticism or review

Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:

(a) the source; and

(b) if given in the source, the name of

the

i - author, in the case of a work,

ii - performer, in the case of a performer's performance,

iii - maker, in the case of a sound recording, or

iv - broadcaster, in the case of a communication signal.

Bill C-32 1996, s. 18

1986

The government agrees with these recommendations in principle. The Act will, however, grant the benefit of the fair dealing exception for research purposes, private or otherwise, for unpublished works deposited with archival or conservation institutions. Finally, the government will examine the possible impact of these research practices in general.

GRCRC 82, 83, 84, 85, 86, p.13

1985

The present fair dealing provisions should not be replaced by the substantially wider "fair use" concept.

CRC 82, p.65

The nature of fair dealing as a defense to an action of infringement should not be changed.

CRC 83, p.65

The purposes for which fair dealing can be a defense should be retained but should be revised to indicate that research must be private to qualify and to indicate that all media of news reporting are covered.

CRC 84, p.66

Factors to be considered by the court may be listed but should be illustrative only and not prioritized.

CRC 85, p.66

Fair dealing should not apply to unpublished works.

CRC 86, p.66

1984

The new Act will... provide both a definition of fair dealing (to be termed "fair use") and a prioritized list of factors to be considered in determining whether a particular use of a work is a fair use.

"Fair Use" will be defined as a use that does not conflict with the normal exploitation of the work or subject matter and does not unreasonably prejudice the legitimate interests of the copyright owner... In addition to the new term "fair use", there will be a prioritized list of factors that the courts will consider in reaching judgments in particular cases.

The first is the impact of the use on a copyright owner's economic reward... Secondly, the type of work involved and its purpose are also relevant... The final factor to be considered is the amount or extent of taking... This fair use doctrine will apply to all copyright subject matter.

GT pp.39-40

1977

That "fair dealing" apply to protected material for the purposes of:

(a) private study;

(b) research;

(c) criticism, or review - whether of that work or of another, where the criticism is accompanied by sufficient acknowledgement of the work; and

(d) summary

i - in a newspaper, magazine or similar periodical, or

ii - by means of a broadcast, or in a motion picture film, where such reporting is accompanied by a sufficient acknowledgement of the work.

CC p.149

27. (2)(b) [(ii) Where author not owner] ^I [When author not owner] ^{II III}

where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mold, cast, sketch, plan, model or study

made [by him for] ^{I II III IV} by the author for the purpose of the work, [provided that he does not thereby] ^{I II} if he does not thereby repeat or imitate the main design of that work;

S.C. 1921, c. 24, s 16(1)(ii) ^I:

R.S. 1927, c. C-32, s. 17(1)(ii) ^{II};

R.S. 1952, c. C-55, s. 17(2)(b) ^{III};

R.S., 1970, c. C-30, s 17(2)(b) ^{IV};

R.S. 1985, c. C-42, s 27(2)(b)

1996

Miscellaneous

32.2 (1) Permitted acts

It is not an infringement of copyright

(a) for an author of an artistic work who is not the owner of the copyright in the work to use any mold, cast, sketch, plan model or study made by the author for the purpose of the work, if the author does not thereby repeat or imitate the main design of the work;

Bill C-32 1996, s. 19

1984

The end of the section will be amended to read that there will be no infringement "if subsequent work taken as a whole does not repeat or imitate the main design of the previous work.

GT p.52

1977

That the exception now allowed by s. 17(2)(b) be retained, but expressed in the words of the *U.K. Copyright Act*, s. 9(9).

CC p.150

27. (2)(c) [When permanently situate in public place] ^{I II III}

the making or publishing of paintings, drawings, engravings or photographs of a work of sculpture or artistic craftsmanship, if permanently [situate in a public place or] ^{I II III} situated in a public place or building, or the making or publishing of paintings, drawings, engravings or photographs [which] ^{I II} that are not in the nature of architectural drawings or plans, [of any architectural work of art] ^{I II III IV V} of any architectural work;

S.C. 1921, c. 24, s. 16(1) (iii) ^I;

R.S. 1927, c. C-32, s. 17(1)(iii) ^{II};

R.S. 1952, c. C-55, s. 17(2)(c) ^{III};

R.S., 1970, c. C-30, s 17(2)(c) ^{IV};

R.S. 1985, c. C-42, s 27(2)(c) ^V;

S.C. 1993, c. 44, s. 64(2)

1996

Miscellaneous

32.2 (1) Permitted acts

It is not an infringement of copyright

(b) for any person to reproduce, in a

painting, drawing, engraving, photograph or cinematographic work;

- i - an architectural work, provided the copy is not in the nature of an architectural drawing or plan, or
- ii - a sculpture or work of artistic craftsmanship or a cast or model of a sculpture or work of artistic craftsmanship, that is permanently situated in a public place or building;

Bill C-32 1996, s. 19

1984

An exemption similar to the current section 17(2)(c) will be retained, for it is in the nature of works situated in public places to be considered as part of the public landscape. The exemption will also be extended to cinematographic and broadcast reproductions of such works.

GT p.51

1977

That the exemption now allowed by s 17(2)(c) be maintained but expressed in the words of the U.K. Copyright Act, s 9(3), 9(4) and 9(6).

CC p.151

27. (2)(d) [Short passage for schools] I II III

the publication in a collection, mainly composed of non-copyright matter, [bona fide] I II III IV intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists, [Not more than two passages] * I II III: Provided that not more than two of such passages] I II if not more than two [of such passages] III IV of the passages from works by the same author are published by the same publisher within five years, and [that the source] I II the source from which [such passages are] I II III IV the passages are taken is acknowledged;

S.C. 1921, c. 24, s. 16(1) (iv) I;

R.S. 1927, c. C-32, s. 17(1)(iv) II;

R.S. 1952, c. C-55, s. 17(2)(d) III;

R.S., 1970, c. C-30, s 17(2)(d) IV;

R.S. 1985, c. C-42, s 27(2)(d)

* margin heading with no new paragraph

1996

30. Literary collections

The publication in a collection, mainly composed of non-copyright matter, intended for the use of educational institutions, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works in which copyright subsists and not themselves published for

the use of educational institutions, does not infringe copyright in those published literary works if

(a) not more than two of the passages from works by the same author are published by the same publisher within five years; and

(b) the source from which the passages are taken is acknowledged.

Bill C-32 1996, s. 18

1986

The government accepts this recommendation.

GRCRC 91, p.14

1985

An exception should be provided to allow for the reproduction of a work as part of questions to be asked, or answered, in an examination.

ERC 91, p.71

1984

There will not be a general exemption for the reproduction of copyright material for educational purposes... There will, however, be an exemption allowing educators to make copies of works for examination purposes.

GT pp.42-43

1977

That the exception now allowed by s. 17(2)(d) be maintained that it apply to published literary or dramatic works as set forth in s. 6(6) of the U.K. Act, subsections (a), (b), and (d) only.

CC p.152

27. (2)(e) [Newspaper report of public lecture unless notice to the contrary] I II III

the publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except [whilst the] I II III while the building is being used for public worship, in a position near the lecturer, but nothing in this paragraph [shall affect] I II affects the provisions [in paragraph (i)] I II in paragraph (a) as to newspaper summaries;

S.C. 1921, c. 24, s. 16(1) (v) I;

R.S. 1927, c. C-32, s. 17(1)(v) II;

R.S. 1952, c. C-55, s. 17(2)(e) III;

R.S., 1970, c. C-30, s 17(2)(e);

R.S. 1985, c. C-42, s 27(2)(e)

1996

Miscellaneous

32.2 (1) Permitted acts

It is not an infringement of copyright

(c) for any person to make or publish, for the purposes of news reporting or news summary, a report of a lecture given in

public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except while the building is being used for public worship, in a position near the lecturer;

Bill C-32 1996, s. 19

1984

Present sections 18, 17(2)(a) and 17(2)(e) will be deleted. The new fair use provision... may be broad enough to allow fair use of copyright material based on the needs of press reporting and analysis, and could be applied to all media.

Where the fair use doctrine cannot resolve the tension between copyright and freedom of speech and the press, resort could be had to section 2(b) of the *Canadian Charter of Rights and Freedoms*. However, to avoid possible confusion or misinterpretation of the limits of copyright, there will be an explicit exemption allowing the press to carry on its necessary reporting and analysis function.

GT p.49

1977

That the exception now allowed by s. 17(2)(e) be extended to include reports given by means of broadcasts and programs originated by a diffusion services.

CC p.153

27. (2)(f) [Reading of extract] I II III

the reading or recitation in public by one person of any reasonable extract from any published work;

S.C. 1921, c. 24, s. 16(1) (vi) I;
R.S. 1927, c. C-32, s. 17(1)(vi) II;
R.S. 1952, c. C-55, s. 17(2)(f) III;
R.S., 1970, c. C-30, s. 17(2)(f) ;
R.S. 1985, c. C-42, s. 27(2)(f)

1996

Miscellaneous

32.2 (1) Permitted acts

It is not an infringement of copyright

(d) for any person to read or recite in public a reasonable extract from a published work; or

Bill C-32 1996, s. 19

1984

The limited purposes served by this section can be better served by the new fair use provision... This section will be deleted.

GT p 52

1977

That the exception now allowed by s. 17(2)(f) be restricted to published literary or dramatic works, properly acknowledged, but should not apply to broadcasts or diffusion by cable services.

CC p.153

27. (2)(g) [Performance without private profit at agricultural fairs] I

the performance without motive of gain of any musical work at any agricultural, agricultural-industrial exhibition or fair which receives a grant from or is held under [Dominion, provincial or municipal] I federal, provincial or municipal authority by the directors thereof;

R.S. 1952, c. C-55, s. 17(2)(g) I;

R.S., 1970, c. C-30, s. 17(2)(g);

R.S. 1985, c. C-42, s. 27(2)(g)

1938-1952

17.(1)(viii) Performance without private profit

The performance without motive of gain of any musical work at any agricultural, agricultural-industrial exhibition or fair which receives a grant from or is held under Dominion, provincial or municipal authority, by the directors thereof.

S.C. 1938, c. 27, s. 2

1936-1938

17.(1)(viii) Performance without private profit

The performance without private profit of any musical work at any agricultural, agricultural-industrial exhibition or fair which receives a grant from or is held under dominion, provincial or municipal authority, provided that such performance shall be deemed to be given without private profit if the only fees which are paid, are paid to the individual performers or their agents, and provided, further, that such fees are not dependent upon the attendance at the exhibition or fair.

S.C. 1936, c. 28, s. 1

1931-1936

17.(1)(viii) Performance without private profit

The performance without private profit of any musical work at any agricultural exhibition or fair which is held under Dominion, Provincial or Municipal authority.

S.C. 1931, c. 8, s. 6

1996

Miscellaneous

32.2 (2) Further permitted acts

It is not an infringement of copyright for a person to do any of the following acts without motive of gain at any agricultural or agricultural-industrial exhibition or fair that receives a grant from or is held by its directors under federal, provincial or municipal authority:

(a) the live performance in public of a musical work;

(b) the performance in public of a sound recording embodying a musical work or a performer's performance of a musical work; or

(c) the performance in public of a communication signal carrying
i - the live performance in public of a musical work, or
ii - a sound recording embodying a musical work or performer's performance of a musical work.

Bill C-32 1996, s. 19

1986

The government agrees with this recommendation.

GRCRC 40, p.7

1985

The revised law should not contain an exception for fairs and exhibitions from the payment of royalties for the public performance of music.

CC 40, p.32

1984

Section 17(2)(g)... will be abolished to be replaced by a system of blanket licences. Calculation of royalties payable to the holders of public performance rights for musical works could be approved in advance by a revised Copyright Appeal Board under the system operated by the musical performing rights societies.

GT p.50

1977

That the exception now allowed by s. 17(2)(g) be deleted.

CC p.154

27. (2)(h) the reproduction of a manuscript, original document, archive, photographic positive or negative, cinematographic film or sound recording for deposit in an institution [on the direction of the Secretary of State pursuant to section 11] ⁱ pursuant to a direction under section [11] ⁱⁱ 14 of the *Cultural Property Export and Import Act*;

S.C. 1975, c. 50, s. 47 ⁱ;

S.C. 1984, c. 40, s. 18(1) ⁱⁱ;

R.S. 1985, c. C-42, s 27(2)(h)

1996

Statutory Obligations

32.1 (1) No infringement

It is not an infringement of copyright for any person

(c) to make a copy of an object referred to in section 14 of the *Cultural Property Export and Import Act*, for deposit in an institution pursuant to a direction under that section; and

Bill C-32 1996, s. 19

1984

The public interest in preserving in Canada a copy of materials of cultural and historic significance justifies the limited qualification on the rights of copyright owners contained in this

exemption... The present exemption will be retained.

GT p.53

27. (2)(i) the disclosure, pursuant to the *Access to Information Act*, of a record within the meaning of that Act, or the disclosure, pursuant to any like Act of the legislature of a province, of like material;

S.C. 1982, c. 111;.,s. 5;

R.S. 1985, c. C-42, s 27(2)(i)

1996

Statutory Obligations

32.1 (1) No infringement

It is not an infringement of copyright for any person

(a) to disclose, pursuant to the *Access to Information Act*, a record within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like material;

32.1 (2) Limitation

Nothing in paragraph (1)(a) or (b) authorizes a person to whom a record or information is disclosed to do anything that, by this Act, only the owner of the copyright in the record, personal information or like information, as the case may be, has a right to do.

Bill C-32 1996, s. 19

1984

Section 17(2)(i) and (j) and section 17(6) were added as a result of the *Access to Information Act*. These exemptions will be retained in the new Act.

GT p.53

27. (2)(j) the disclosure, pursuant to the *Privacy Act*, of personal information within the meaning of that Act, or the disclosure, pursuant to any like Act of the legislature of a province, of like information;

S.C. 1982, c. 111;.,s. 5;

R.S. 1985, c. C-42, s 27(2)(j)

1996

Statutory Obligations

32.1 (1) No infringement

It is not an infringement of copyright for any person

(b) to disclose, pursuant to the *Privacy Act*, personal information within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like information;

32.1 (2) Limitation

Nothing in paragraph (1)(a) or (b) authorizes a person to whom a record or information is disclosed to do anything that, by this Act, only the owner of the copyright in the record, personal information or like information, as the case may be, has a right to do.

Bill C-32 1996, s. 19

1984
Section 17(2)(i) and (j) and section 17(6) were added as a result of the *Access to Information Act*. These exemptions will be retained in the new Act.

GT p.53

27. (2)(k) the making of a copy of a recording, as defined in section 8 of the *National Archives of Canada Act*, for the purposes of that section;

S.C. 1987, c. 1, s. 13;

R.S. 1985 (1987), c. 1 (3rd Supp.), s. 13

1996

National Archives of Canada
30.5 Copies for archival purposes
The National Library of Canada may

(a) make a copy of a recording, as defined in section 8 of the *National Archives Act*, for the purposes of that section; and

(b) at the time that a broadcast undertaking, within the meaning of subsection 2(1) of the *Broadcasting Act*, communicates a work or other subject-matter to the public by telecommunication, make a copy for archival purposes of the work or other subject-matter that is included in that communication.

Bill C-32 1996, s. 18

27. (2)(l) the making by a person who owns a copy of a computer program, which copy is authorized by the owner of the copyright, of a single reproduction of the copy by adapting, modifying or converting the computer program or translating it into another computer language if the person proves that

(i) the reproduction is essential for the compatibility of the computer program with a particular computer,

(ii) the reproduction is solely for the person's own use, and

(iii) the reproduction is destroyed forthwith when the person ceases to be the owner of the copy of the computer program; and,

S.C. 1988, c. 15, s. 5;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 5

1996

Computer Programs
30.6 Permitted acts

It is not an infringement of copyright in a computer program for a person who owns a copy of the computer program that is authorized by the owner of the copyright to

(a) make a single reproduction of the copy by adapting, modifying or converting the computer program or translating it into another computer language if the person proves that the reproduced copy is

i - essential for the compatibility of the computer program with a particular computer,

ii - solely for the person's own use, and

iii - destroyed immediately after the person ceases to be the owner of the copy; or

Bill C-32 1996, s. 18

27. (2)(m) the making by a person who owns a copy of a computer program, which copy is authorized by the owner of the copyright, of a single reproduction for backup purposes of the copy or of a reproduction referred to in paragraph (l) if the person proves that the reproduction is destroyed forthwith when the person ceases to be the owner of the copy of the computer program.

S.C. 1988, c. 15, s. 5;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 5

1996

Computer Programs
30.6 Permitted acts

It is not an infringement of copyright in a computer program for a person who owns a copy of the computer program that is authorized by the owner of the copyright to

(b) makes a single reproduction for backup purposes of the copy or of a reproduced copy referred to in paragraph (a) if the person proves that the reproduction for backup purposes is destroyed immediately when the person ceases to be the owner of the copy of the computer program.

Bill C-32 1996, s. 18

1987

Subsection 17(2) of the said Act is amended by striking out the word "and" at the end of paragraph (j) thereof and by adding thereto the following paragraphs:

(l) where a person is in lawful and actual possession of a copy of a computer program, which copy is authorized by the owner of the copyright, the making by the person of a reproduction of the copy by adapting, modifying or converting the computer program or translating it into another computer language if the person proves that

(i) the reproduction is solely for the person's own use,

(ii) not more than one reproduction is used by the person at any given time while the person is in lawful and actual possession of the copy of the computer program, and

(iii) the reproduction is forthwith destroyed when the person ceases to be entitled to the lawful and actual possession of the copy of the computer program, and

(m) where a person is in lawful and actual possession of a copy of a computer program, which copy is authorized by the owner of the copyright, the making by the person of a reasonable number of reproductions of the copy or of a reproduction referred to in paragraph (l) if the person proves that

(i) while the person is in lawful and actual possession of the copy of the computer program, not more than one of the reproductions is used by the person at any given time and the reproduction is used in lieu of the copy of the computer program or the reproduction referred to in paragraph (l), and

(ii) the reproductions are forthwith destroyed when the person ceases to be entitled to the lawful and actual possession of the copy of the computer program.

Bill C-60 1987, 5, pp.3-4

1986

The government agrees with this recommendation in principle.

GRCRC 59, p.9

The government has studied the possibility of providing the exception suggested in recommendation 61 but has decided against it.

GRCRC 61, p.9

1985

The Act should provide an exception to the right of reproduction to permit the making of a back-up copy.

CRC 59, p.46

The government should study the possibility of providing an exception to permit the reproduction of a substantial part of a pre-existing program as a non-substantial part of another program.

CRC 61, p.46

1984

The right of a copyright owner to authorize (or prohibit) a machine-readable program based upon a published computer program in human-readable form will last five years from the year of creation of the human-readable program. After this time, any person with access to the program in human-readable form may use it to make a machine-readable program which will not constitute an infringement of either the underlying human-readable program or of any other machine-readable program based upon the human-readable program.

GT p.82

There will be a fair use provision similar (or identical to) the provision proposed for works protected by traditional copyright.

GT p.83

No act done with respect to a machine-readable program will be considered an infringing act with respect to the human-readable program upon which it is based.

GT p.84

1977

That it be specified in the infringement action of the Act that

nothing in the Act prevents the use of a computer program to operate a computer.

CC p.111

27. (3) Further exceptions

[Further provided that no] ⁱ No church, college or school and no religious, charitable or fraternal organization shall be held liable to pay any compensation to the owner of any musical work or to any person claiming [through him by] ⁱ ⁱⁱ ⁱⁱⁱ through that author by reason of the public performance of any musical work in furtherance of a religious, educational or charitable object.

S.C. 1938, c. 27, s. 5 ⁱ;

R.S. 1952, c. C-55, s. 17(3) ⁱⁱ;

R.S., 1970, c. C-30 s 17(3) ⁱⁱⁱ;

R.S. 1985, c. C-42, s 27(3)

1936-1938

17.(1)(vii) Performance without private profit

The performance of any musical work by any church, college or school, or by any religious, charitable or fraternal organization, provided such performance is given without private profit for religious, educational or charitable purposes; provided, further, that such performance shall be deemed to be given without private profit if the only fees which are paid are paid to individual performers and that no fees or commissions are paid to any promoter, producer or contractor for services in promoting or producing the performance.

S.C. 1936, c. 28, s. 1

1931-1936

17.(1)(vii) Performance without private profit

The performance of any musical work at any church, college or school, or by any religious, charitable or fraternal organization, provided such performance is given without private profit for religious, educational or charitable purposes.

S.C. 1931, c. 8, s. 6

1996

Miscellaneous

32.(2)(3) Further permitted acts

No religious organization or institution, educational institution and no charitable or fraternal organization shall be held liable to pay any compensation for doing any of the following acts in furtherance of a religious, educational or charitable object:

(a) the live performance in public of a musical work;

(b) the performance in public of a sound recording embodying a musical work or a performer's performance of a musical work; or

(c) the performance in public of a communication signal carrying
i - the live performance in public of a musical work, or
ii - a sound recording embodying a musical work or performer's performance of a musical work.

Bill C-32 1996, s. 19

1986

The government agrees with this recommendation in principle.

GRCRC 41, p.7

The government agrees with this recommendation in principle.

GRCRC 67, p.10

1985

The revised Act should provide an exception from copyright liability for the public performance of a musical work during a religious service.

CRC 41, p.33

The performance of a sound recording during a religious service should not constitute an infringement of copyright.

CRC 67, p.52

1984

The exemption in section 17(3) will be abolished. However, a specific exemption will be provided to allow performances during religious services.

The exemption will not apply to services broadcast or diffused outside the location where the service takes place.

The fees to be paid by a charitable or religious organization for the performance of a work for charitable or religious purposes will be subject to the approval of the Copyright Appeal Board, which will take into account the altruistic purpose of the performance.

GT pp.50-51

1977

That the public performance on premises occupied by any religious, educational or charitable organization, where no person obtains a benefit in association with such a performance and where no entrance fee is charged should not constitute an infringement of copyright.

CC p.156

27. (4) Infringement by personal action

Copyright in a work [shall also be deemed] ⁱ ⁱⁱ ⁱⁱⁱ ^{iv} shall be deemed to be infringed by any person who

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; [or,] ⁱ ⁱⁱ

(b) distributes either for the purposes of trade, or to such an extent as to affect prejudicially the owner of the copyright; [or,] ⁱ ⁱⁱ

(c) by way of trade exhibits in public; or

(d) imports for sale or hire into Canada;

any work [which to his knowledge infringes] ⁱ ⁱⁱ [that to his knowledge infringes] ⁱⁱⁱ ^{iv} that to the knowledge of that person infringes copyright or would infringe copyright if it had been made within Canada.

S.C. 1921, c. 24, s. 16(2) ⁱ;

R.S. 1927, c. C-32, s. 17(2) ⁱⁱ;

R.S. 1952, c. C-55, s. 17(4) ⁱⁱⁱ;

R.S., 1970, c. C-30, s. 17(4) ^{iv};

R.S. 1985, c. C-42, s. 27(4)

1996

27. (2) Secondary infringement

It is an infringement of copyright for any person to

(a) sell or rent out,

(b) distribute to such an extent as to affect prejudicially the owner of the copyright,

(c) by way of trade distribute, expose or offer for sale or rental, or exhibit in public,

(d) possess for the purpose of doing anything referred to in paragraphs (a) to (c), or

(e) import into Canada for the purpose of doing anything referred to in paragraphs (a) to (c),

a copy of a work, sound recording or fixation of a performer's performance or of a communication signal that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.

27. (3) Knowledge of importer

In determining whether there is an infringement under subsection (2) in the case of an activity referred to in any of paragraphs (2)(a) to (d) in relation to a copy that was imported in the circumstances referred to in paragraph (2)(e), it is irrelevant whether the importer knew or should have known that the importation of the copy infringed copyright.

Bill C-32 1996, s. 15

1977

That the terms of present s 17(4) be retained but also include indirect infringement with respect to all protected subject matter.

CC p.177

That section 17(4), prohibiting the importation of infringing copies of any work, be retained but amended to provide exceptions for individuals importing for private use, and for institutions, as designated in the Isley Report.

CC p.203

**27. (5) [Infringement when reproduced for private profit without owner's consent] I II III
Public performance for private profit without owner's consent**

Copyright in a work [shall also be] I II III IV shall be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, [unless he was not aware, and] I II III IV unless that person was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

S.C. 1921, c. 24, s. 16(3) I;
R.S. 1927, c. C-32, s. 17(3) II;
R.S. 1952, c. C-55, s. 17(5) III;
R.S., 1970, c. C-30, s. 17(5) IV;
R.S. 1985, c. C-42, s. 27(5)

1996

27. (5) Public performance for profit

It is an infringement of copyright for any person, for profit, to permit a theatre or other place of entertainment to be used for the performance in public of a work or other subject-matter without the consent of the owner of the copyright unless that person was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

Bill C-32 1996, s. 15

1977

That the terms of present s. 17(5) be retained but without the words "unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright".

CC p 177

27. (6) Restriction on paragraph [17(2)(i) and (j)] I (2)(i) or (j)

Nothing in paragraph [17(2)(i) or (j)] I (2)(i) or (j) authorizes any person to whom a record or information is disclosed to do anything that, by this Act, only the owner of the copyright has a right to do.

S.C. 1982, c. 111, s. 5(2) I;
R.S., 1985, c. C-42, s. 27(6)

1984

Section 17(2)(i) and (j) and section 17(6) were added as a result of the *Access to Information Act*. These exemptions will be retained in the new Act.

GT p.53

28. Report in newspaper of political speech no infringement

Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

S.C. 1921, c. 24, s. 17;
R.S. 1927, c. C-32, s. 18;
R.S. 1952, c. C-55, s. 18;
R.S. 1970, c. C-30, s. 18;
R.S. 1985, c. C-42, s. 28

1996

29.2 Reporting or news summary

Fair dealing for the purpose of news reporting or news summary does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the

- i - author, in the case of a work,
- ii - performer, in the case of a performer's performance,
- iii - maker, in the case of a sound recording, or
- iv - broadcaster, in the case of a communication signal.

Bill C-32 1996, s. 18

Miscellaneous

32.2 (1) Permitted acts

It is not an infringement of copyright (e) for any person to make or publish, for the purposes of news reporting or news summary, a report of an address of a political nature given at a public meeting.

Bill C-32 1996, s. 19

1984

Present sections 18, 17(2)(a) and 17(2)(e) will be deleted. The new fair use provision... may be broad enough to allow fair use of copyright material based on the needs of press reporting and analysis, and could be applied to all media... Where the fair use doctrine cannot resolve the tension between copyright and freedom of speech and the press, resort could be had to section 2(b) of the *Canadian Charter of Rights and Freedoms*. However, to avoid possible confusion or misinterpretation of the limits of copyright, there will be an explicit exemption allowing the press to carry on its necessary reporting and analysis function.

GT p.49

1977

That the exception now allowed by s. 18 be extended to include broadcasting and diffusion by cable services, in addition to newspapers.

CC p 156

INFRINGEMENT NOT ADOPTED

1. Archival Purposes

1986

The government accepts this recommendation.

GRCRC 88, p.14

1985

The revised law should provide an exception to permit an archival institution to make a copy of a work which is otherwise not available and which is already in the collection, for the purpose of preserving the archival copy of that work.

CRC 88, p.70

An exception should be provided to permit archival institutions to make a copy of a work for another archival institution where the latter has received a request for a copy of a work from an individual researcher for the purpose of private research. The making and issuance of copies under this exception should not constitute publication.

CRC 89, p.70

1984

An exemption will be introduced... permitting libraries and archives to make limited numbers of copies of unpublished, out of print or otherwise unavailable material already in their collections for reference and preservation purposes.

GT p.43

1977

That no statutory exceptions be provided to libraries and archives with respect to copyright materials deposited therein, other than to permit the making of a copy for the sole purpose of preserving the material which is deteriorating or damaged.

CC p.175

2. Broadcasting

1996

Statutory Obligations

32.1 (1) No infringement

It is not an infringement of copyright for any person

(d) to make a fixation or copy of a work or other subject-matter in order to comply with the *Broadcasting Act* or any rule, regulation or other instrument made under it.

32.1 (3) Destruction of fixation or copy

Unless the *Broadcasting Act* otherwise provides, a person who makes a fixation or copy under paragraph (1)(d) shall destroy it immediately on expiration of the period for which it must be kept pursuant to that Act, rule, regulation or other instrument,

Bill C-32 1996, s. 19

3. Computer Information Storage and Retrieval Systems

1984

Copyright material will be protected regardless of the medium of expression. Hard copies such as magnetic tapes and discs will be considered copies, thus making unauthorized reproduction in these formats an infringement.

GT p.11

It will be an infringing act with respect to a protected machine-readable program:

(a) to do or authorize any act to which the owner of the program copyright has exclusive right;

(b) to sell, lease, licence, trade, or import, or to authorize any such acts with respect to any machine-readable program that the alleged infringer knows or has reasonable grounds to suspect is an infringing act.

GT p.83

It will be an infringing act with respect to a protected machine-readable program to remove, obscure, or alter the computer program copyright notice required by the Act. It will be an infringing act with respect to an unpublished protected machine-readable program to add a computer program copyright notice without the consent of the computer copyright owner.

GT p.84

1977

That unauthorized recording of unpublished copyright material for use in an ISRS constitute an infringement.

That the unauthorized output by an ISRS of legally stored copyright material, whether effected by printout, cathode ray tube display, or otherwise, constitute an infringement.

CC p.129

That there be a statutory right of discovery whereby a copyright owner may compel disclosure of whether any of his copyright material is or has been stored in an ISRS.

That where, after the expiration of a period to be fixed by regulation, there is a failure to answer a request for discovery or there is a false answer given to that request, the storing of copyright material in an ISRS become an infringement subject to all remedies afforded by the Act.

CC p.129

1977

That the making of a contrivance embodying published copyright material for ISRS purposes, and its input into an ISRS, not constitute infringement, subject to a right of discovery.

CC p.129

4. Educational Broadcasting

1986

The government accepts this recommendation

GRCRC 90, p.14

1985

The revised law should provide an exception to permit teachers and students, in the normal course of teaching activities to:

(b) transmit and retransmit a work within the confines of a single educational institution.

CRC 90, p.71

1984

A minor exemption will apply to broadcasts, cable diffusions and other forms of program dissemination when the production, origination and receipt of the program are confined to the educational institution. This exemption will be subject to the same conditions as that for educational performances.

GT p.42

5. Educational Institutions

1996

29.3 Interpretation

For the purposes of sections 29.4, 29.6 and 29.7, a student of an educational institution is deemed to be a person acting under the authority of the educational institution.

Bill C-32 1996, s. 18

29.4 (1) Reproduction for instruction

It is not an infringement of copyright for an educational institution or a person acting under its authority to make a copy of a work

(a) onto a dry-erase board, flip chart or any other thing on which written material may be displayed, or

(b) as an image projected using an overhead projector or similar device for the purposes of education or training on the premises of an educational institution.

29.4 (2) Reproduction for examinations, etc.

It is not an infringement of copyright for an educational institution or a person acting under its authority to reproduce, perform in public or communicate to the public by telecommunication a work or other subject-matter for any purpose related to the giving of an assignment, test or examination on the premises of an educational institution including, but not limited to, setting the questions and communicating the questions and answers to the persons completing the assignment or taking the test or examination and answering the questions by those persons.

29.4 (3) Where work commercially available

Except in the case of manual reproduction, the exemption from copyright infringement provided by paragraph (1)(b) and subsection (2) does not apply if the work or other subject-matter is commercially available in a medium and of a quality that is appropriate for the purpose referred to in that paragraph or subsection, as the case may be.

Bill C-32 1996, s. 18

29.5 Performances

It is not an infringement of copyright for an educational institution or a person acting under its authority to do the following acts if they are done on the premises of an educational institution for educational or training purposes and not for profit, before an audience consisting primarily of students of the educational institution, instructors acting under the authority of the educational institution or any person who is directly responsible for setting a curriculum for the educational institution:

(a) the live performance in public, primarily by students of the educational institution, of a work;

(b) the performance in public of a sound recording or of a work or a performer's performance that is embodied in a sound recording; and

(c) the performance in public of a work or other subject-matter at the time of its communication to the public by telecommunication.

Bill C-32 1996, s. 18

29.6 (1) News and commentary

Subject to subsection (2) and section 29.9, it is not an infringement of copyright for an educational institution or a person acting under its authority to

(a) make, at the time of its communication to the public by telecommunication, a single copy of a news program or a news commentary program, for the purposes of performing the copy for the students of the educational institution for educational or training purposes; and

(b) perform the copy in public, at any time or times within one year after the making of a copy under paragraph (a), before an audience consisting primarily of students of the educational institution on its premises for educational or training purposes.

29.6 (2) Royalties for reproduction and performance

The educational institution must

(a) on the expiration of one year after making a copy under paragraph (1)(a), pay the royalties and comply with any terms and conditions fixed under this Act for the making of the copy or destroy the copy; and

(b) where it has paid the royalties referred to in paragraph (a), pay the royalties and comply with any terms and conditions fixed under this Act for any performance in public of the copy after the expiration of that year.

Bill C-32 1996, s. 18

29.7 (1) Reproduction of broadcast

Subject to subsection (2) and section 29.9, it is not an infringement of copyright for an educational institution or a person acting under its authority to

(a) make a single copy of a work or other subject-matter at the time that it is communicated to the public by telecommunication; and

(b) keep the copy for up to thirty days to decide whether to perform the copy for educational or training purposes.

29.7 (2) Royalties for reproduction

The educational institution must, on or before the expiration of the thirty days, pay royalties for the making of the copy and comply with any terms and conditions fixed under this Act for the making of the copy or destroy the copy.

29.7 (3) Royalties for performance

Where an educational institution has paid the royalties referred to in subsection (2), it is not an infringement of copyright

ss. 27 & 28 INFRINGEMENT OF COPYRIGHT - Infringement Not Adopted

for the educational institution or a person acting under its authority to perform the copy in public for educational or training purposes on the premises of the educational institution before an audience consisting primarily of students of the educational institution if the educational institution pays the royalties and complies with any terms and conditions fixed under this Act for the performance in public.

29.8 Unlawful reception

The exceptions to infringement of copyright provided for under sections 29.5 to 29.7 do not apply where the communication to the public by telecommunication was received by unlawful means.

Bill C-32 1996, s. 18

29.9 (1) Records and marking

Where an educational institution or person acting under its authority

(a) makes a copy of a news program or a news commentary program and performs it pursuant to section 29.6, or

(b) makes a copy of a work or other subject-matter communicated to the public by telecommunication and performs it pursuant to section 29.7,

the educational institution shall keep a record of the information prescribed by regulation in relation to the making of the copy, the destruction of it or any performance of it for which royalties are payable under this Act and shall, in addition, mark any copy that has not been destroyed in the manner prescribed by regulation.

29.9 (2) Regulations

The Board may, with the approval of the Governor in Council, make regulations

(a) prescribing the information in relation to the making, destruction, performance and marking of copies that must be kept under subsection (1),

(b) prescribing the manner and form in which records referred to in that subsection must be kept and copies destroyed or marked, and

(c) respecting the sending of information to collective societies referred to in section 71.

Bill C-32 1996, s. 18

6. Educational Performances

1986

The government accepts this recommendation.

GRCRC 90, p.14

1985

The revised law should provide an exception to permit teachers and students, in the normal course of teaching activities to:

(a) perform a work in public

CRC 90, p.71

1984

A limited specific exemption from the exclusive right of public performance will be granted for certain performances for educational purposes. It will apply to all types of copyright works and be

available only for non-profit educational institutions. The exemption will apply only to teaching activities when the performers are students or instructors.

GT pp.41-42

1977

That to be permissible to perform material protected by copyright in the course of activities in a school, without such a performance constituting a performance in public, providing any audience is limited to teachers at or pupils in attendance at that school.

CC p.173

7. Ephemeral Recording

1986

In line with the routine practices of broadcasters, recommendation 80 concerning ephemeral recordings will be amended to cover not only the situations described in paragraph (a) and (b) of the recommendation but also the situations described in *From Gutenberg to Telidon* thus:

- broadcasters and cable or satellite systems will be able to pre-record works for transmission as long as such transmission has been authorized;

- the duration of the exception will be extended to 6 months after initial transmissions;

- upon the expiry of the prescribed period, recordings may be kept only for research and study purposes.

GRCRC 80, p.12

1985

Exceptions should be provided for the making of ephemeral recordings by broadcasters:

(a) pursuant to CRTC regulations, or

(b) in order to permit the broadcast of the program in a different time zone provided that the recording is erased after eight days.

CRC 80, p.62

1984

The details of the exemption will include several restrictions. Use of the copy will be limited to the broadcasting organization for which it was originally intended. All organizations concerned with broadcasting, or the preparation of programs for broadcasting, will have the right to record agreed on material for their own purposes so long as the material for their own purposes so long as the material is used solely for the agreed broadcast. The exemption will also apply where a broadcaster commissions an independent producer to prepare a program.

Public comment is invited on the length of time that broadcasting organizations should be allowed to retain copies of an ephemeral recording... After the period covered by the exemption, broadcasters will be allowed to retain an archival copy of the program for study or research purposes.

GT pp.44-45

1977

That an exception for "ephemeral recordings" be provided in accordance with the following:

(a) authorization to broadcast a copyright work should be deemed to include the right to make ephemeral recordings of the work solely for the purposes of broadcasting,

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(b) a recording should be deemed an ephemeral recording if it or copies of it are used solely for the purpose of the authorized broadcasting within a period of 30 days after the day when it or a copy of it was first broadcast

CC p.168

8. Incidental Inclusion

1996

Incidental Inclusion

30.7 Incidental use

It is not an infringement of copyright to incidentally and not deliberately

(a) include a work or other subject-matter in another work or other subject-matter; or

(b) do any act in relation to a work or other subject-matter that is incidentally and not deliberately included in another work or subject-matter.

Bill C-32 1996, s. 18

1986

The government agrees with these recommendations.

GRCRC 79, 81, p.12

1985

It should not be a copyright infringement to use incidentally an artistic work without authorization in a broadcast.

CRC 79, p.60

A broadcaster should not be required to identify the authors of works broadcast except where the identification is incorporated in the work itself.

CRC 81, p.62

1984

It is not clear why the ordinary copyright principles should not be applied here when they are applied in most other circumstances of incidental or other use of copyright material. The limited purposes served by this section can be better served by the new fair use provision. Therefore, an "incidental use exemption" will not be adopted.

GT p.51

1977

That incidental use of an artistic work in a film or broadcast not constitute an infringement of copyright.

CC p.169

9. Legislative, Judicial & Administrative Proceedings

1986

The government agrees in principle with recommendation 10. It has begun consultations on this subject with the provincial governments.

GRCRC 10, p.3

As for recommendation 13, it will be necessary to ensure that this will not entail the removal of rights - particularly moral rights - that are not needed for the purpose of achieving the objectives sought by this recommendation.

GRCRC 13, p.3

1985

Statutes, regulations and judicial decisions of courts and tribunals at all levels of jurisdiction should be in the public domain.

CRC 10, p.10

Written submissions sent to Parliament, Legislatures or to public bodies of inquiry should be in the public domain from the time of their receipt.

CRC 13, p.12

1984

A specific exemption will be introduced covering legislative, judicial and administrative proceedings and the publication of official and unofficial reports of such proceedings.

GT p.49

1977

That any use of protected subject matter for the purposes of judicial proceedings or in official reports of such proceedings not constitute an infringement.

CC p.166

10. Libraries

1986

The government agrees in principle with this recommendation.

GRCRC 25, p.5

1985

No exception should be provided for reproduction by libraries.

CRC 25, p.22

1977

That the defence of fair dealing be available to a librarian who makes a copy of material for a user if that user also has available to him the defense of fair dealing. That no further exceptions for libraries be provided.

CC p.166

11. Libraries, Archives and Museums

1996

30.1 (1) Management and maintenance of collection

It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, in accordance with the regulations made under subsection (4), for the maintenance or management of its permanent collection or the collection of another library, archive or museum, a copy of a work or other subject-matter, whether published or unpublished, in its permanent collection

(a) if the original is rare or unpublished and is

i - deteriorating, damaged or lost, or

ii - at risk of deterioration or of becoming damaged or lost;

(b) for the purposes of on-site consultation if the original cannot be viewed, handled or listened to because of its condition or because of the atmospheric conditions in which it must be kept;

(c) in an alternative format if the original is currently in an obsolete format or the technology required to use the original is unavailable;

(d) for the purposes of internal record-keeping and cataloging;

(e) for insurance purposes or police investigations; or

(f) if necessary for restoration.

30.1 (2) Limitations

Paragraphs (1)(a) to (c) do not apply where an appropriate copy is commercially available in a medium and of a quality that is appropriate for the purposes of subsection (1).

30.1 (3) Destruction of intermediate copies

If a person must make an intermediate copy in order to make a copy under subsection (1), the person must destroy the intermediate copy as soon as it is no longer needed.

30.1 (4) Regulations

The Governor in Council may make regulations with respect to the procedure for making copies under subsection (1).

Bill C-32 1996, s. 18

30.2 (1) Research or private study

It is not an infringement of copyright for a library, archive or museum or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1.

30.2(2) Copies of articles for research, etc.

It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, by reprographic reproduction, for any person requesting to use the copy for research or private study, a copy of a work that is, or that is contained in, an article published in a newspaper, review, magazine or other periodical

30.2 (3) Restriction

Subsection (2) does not apply in respect of

(a) a work of fiction or poetry or a dramatic or musical work; or

(b) an article that was published in a newspaper or magazine within twelve months before the copy was made.

30.2 (4) Conditions

A library, archive or museum may make copies under subsection (2) only on condition that

(a) the person for whom the copies will be made has satisfied the library, archive or museum that the person will not use the copies for a purpose other than research or private study; and

(b) the person is provided with a single copy of the work.

30.2(5) Patrons of other libraries, etc.

A library, archive or museum or a person acting under the authority of a library, archive or museum may do, on behalf of a person who is a patron of another library, archive or museum, anything under subsection (1) or (2) in relation to printed matter that it is authorized by this section to do on behalf of a person who is one of its patrons.

30.2 (6) Regulations

The Governor in Council may, for the purposes of this section, make regulations

(a) defining the words "newspaper" and "magazine"; and

(b) prescribing the manner and form in which the conditions set out in subsection (4) are to be met.

Bill C-32 1996, s. 18

12. Libraries, Archives and Museums in Educational Institutions

1996

30.4 Application to libraries, etc. within educational institutions

For greater certainty, the exceptions to infringement of copyright provided for under sections 29.4 to 30.3 and 45 also apply in respect of a library, archive or museum that forms part of an educational institution.

Bill C-32 1996, s. 18

13. Machines Installed in Educational Institutions, Libraries, Archives and Museums

1996

30.3 (1) No infringement by educational institution, etc.

An educational institution or a library, archive or museum does not infringe copyright where

(a) a copy of a work is made using a machine for the making, by reprographic reproduction, of copies of works in printed form;

(b) the machine is installed by or with the approval of the educational institution, library, archive or museum on its premises for use by students, instructors or staff at the educational institution or by persons using the library, archive or museum; and

(c) there is affixed in the prescribed manner and location a notice warning of infringement of copyright.

30.3 ((2) Regulations

The Governor in Council may, for the purposes of paragraph 1(c), prescribe by regulation the manner of affixing and location of notices and the dimensions, form and contents of notices.

Bill C-32 1996, s. 18

14. Parallel Importation of Books

1996

27.1 (1) Importation of books

Subject to subsection (3), it is an infringement of copyright in a book for any person to import the book where

(a) copies of the book were made with the consent of the owner of the copyright in the book in the country where the copies were made, but were imported without the consent of the owner of the copyright in the book in Canada, and

(b) the person knows or should have known that the book would infringe copyright if it was made in Canada by the importer.

27.2 (2) Secondary infringement

Subject to subsection (3), where the circumstances described in paragraph (1)(a) exist, it is an infringement of copyright in an imported book for any person who knew or should have known that the book would infringe copyright if it was made in Canada by the importer to

- (a) sell or rent out the book;
- (b) by way of trade, distribute, expose or offer for sale or rental, or exhibit in public, the book; or
- (c) possess the book for the purpose of any activity referred to in paragraph (a) or (b).

27. (3) Limitation

Subsections (1) and (2) only apply where there is an exclusive distributor of the book and the acts described in those subsections take place in the part of Canada or in respect of the particular sector of the market for which the person is the exclusive distributor.

27.4 (4) Exclusive distributor

An exclusive distributor is deemed, for the purposes of entitlement to any of the remedies under Part IV in relation to an infringement under this section, to derive an interest in the copyright in question by licence.

27. (5) Notice

No exclusive distributor, copyright owner or exclusive licensee is entitled to a remedy under Part IV in relation to an infringement under this section unless, before the infringement occurred, notice in writing has been given to the person referred to in subsection (1) or (2), as the case may be, that there is an exclusive distributor of the book.

Bill C-32 1996, s. 15

15. Plates

1996

27.(4) Plates

It is an infringement of copyright for any person to make or possess a plate that has been specifically designed or adapted for the purpose of making infringing copies of a work or other subject-matter.

Bill C-32 1996, s. 15

16. Persons with Perceptual Disabilities

1996

Persons with Perceptual Disabilities

32. (1) Reproduction in alternate format

It is not an infringement of copyright for any person to make a single copy or sound recording of a literary, musical or dramatic work, other than a cinematographic work, in a format that is more appropriate to meet the needs of a person with a perceptual disability.

32. (2) Limitation

Subsection (1) does not authorize the making of a large print book.

32. (3) Limitation

Subsection (1) does not apply where a copy or sound recording of the work is commercially available in a format that would accommodate the person's needs.

32. (4) Destruction of intermediate copies

If a person must make an intermediate copy in order to make a copy or sound recording under subsection (1), the person must destroy the intermediate copy as soon as it is no longer needed.

32. (5) Royalties, etc.

It is not an infringement of copyright for a person to make more than one copy or sounding recording under subsection (1) if the person has paid the royalties and complied with any terms and conditions fixed under this Act.

32. (6) Use of copies

No person who makes a copy or sound recording under subsection (1) or (5) may, without the express consent of the owner of the copyright, use the copy or sound recording for any purpose other than that for which the making of the copy or sound recording was authorized by this section.

Bill C-32 1996, s. 19

1986

The government partly accepts this recommendation, which will not be accompanied by the obligation to pay royalties. This measure is suggested by the appropriate recommendations in the *Obstacles* report.

GRCRC 87, p.13

1985

The revised law should permit the production of special media materials without authorization of the copyright owner but with payment to be made in accordance with tariffs established by the Copyright Appeal Board.

CRC 87, p.68

1984

There will be a general exemption for the benefit of perceptually handicapped persons.

GT p.46

1977

That no special exception be provided for the benefit of producers of special media material for the handicapped.

CC p.171

17. Private Copying

1996

PART VIII
PRIVATE COPYING

Bill C-32 1996, s. 50

Interpretation

79. Definitions

In this Part,

"audio recording medium"

means a recording medium, regardless of its material form, onto which a sound recording may be reproduced and that is of a kind ordinarily used by

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individual consumers for that purpose, excluding any prescribed kind of recording medium;

"blank audio recording medium"
means

(a) an audio recording medium onto which no sounds have ever been fixed, and

(b) any other prescribed audio recording medium;

"collecting body"

means a collective society, or other society, association or corporation, that is designated as the collecting body under subsection 83(8);

"eligible author"

means an author of a musical work, whether created before or after the coming into force of this Part, that is embodied in a sound recording, whether made before or after the coming into force of this Part, if copyright subsists in Canada in that musical work;

"eligible maker"

means a maker of a sound recording that embodies a musical work, whether the first fixation of the sound recording occurred before or after the coming into force of this Part, if

(a) both the following two conditions are met:

i - the maker, at the date of the first fixation, if a corporation, had its headquarters in Canada or, if a natural person, was a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, and

ii - copyright subsists in Canada in the sound recording, or

(b) the maker, at the date of that first fixation, if a corporation, had its headquarters in a country referred to in a statement published under section 85 or, if a natural person, was a citizen, subject or permanent resident of such a country;

"eligible performer"

means the performer of a performer's performance of a musical work, whether it took place before or after the coming into force of this Part, if the performer's performance is embodied in a sound recording and,

(a) both the following two conditions are met:

i - the performer was, at the date of the first fixation of the sound recording, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, and

ii - copyright subsists in Canada in the performer's performance, or

(b) the performer was, at the date of that first fixation of the sound recording, a citizen, subject or permanent resident of a country referred to in a statement published under section 85

"prescribed"

means prescribed by regulations made under this Part.

Bill C-32 1996, s. 50

Copying for Private Use

80. (1) Where no infringement of copyright

Subject to subsection (2), the act of reproducing all or any substantial part of

(a) a musical work embodied in a sound recording,

(b) a performer's performance of a musical work embodied in a sound recording, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied

onto an audio recording medium or the private use of the person who makes the copy does not constitute an infringement of the copyright in the musical work, the performer's performance or the sound recording.

80. (2) Limitation

Subsection (1) does not apply if the act described in that subsection is done for the purpose of doing any of the following in relation to any of the things referred to in paragraphs (1)(a) to (c):

(a) selling or renting out, or by way of trade exposing or offering for sale or rental;

(b) distributing, whether or not for the purpose of trade;

(c) communicating to the public by telecommunication; or

(d) performing, or causing to be performed in public.

Bill C-32 1996, s. 50

Right of Remuneration

81. Right of remuneration

Subject to and in accordance with this Part, eligible authors, eligible performers and eligible makers have a right to receive remuneration from manufacturers and importers of blank audio recording media in respect of the reproduction for private use of

(a) a musical work embodied in a sound recording,

(b) a performer's performance of a musical work embodied in a sound recording, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied.

Bill C-32 1996, s. 50

1986

The government recognizes the merit of the Sub-Committee's objective to compensate creators but will have to examine the best way to implement it.

GRCRC 93, 94, 95, 96 p 14

1985

Home copying should be permitted under the revised law subject to payment of compensation in the form of a royalty on the material support and on

the machine used to reproduce the work.

CRC 93, p.76

The mechanism for establishing the amount of royalties should be the filing of tariffs for approval by the Copyright Appeal Board.

CRC 93, p.77

Payment should be made by the manufacturers or importers directly to the collectives.

CRC 95, p.95

Where works are protected on a reciprocal basis, the owners of the copyright in those works should participate in the compensation system on a reciprocal basis.

CRC 96, p.77

18. Reconstruction of Buildings

1984

The new *Copyright Act* will contain a provision similar to that in the United Kingdom's legislation allowing for the reconstruction of partially or completely destroyed buildings without the consent of the copyright owners.

GT p.52

1977

That the reconstruction of a partially or completely destroyed building not constitute an infringement of the copyright in the building, not an infringement of the copyright in the plans and drawings of the building.

CC p.170

19. Reprography

1986

The government agrees in principle with this recommendation.

GRCRC 24, p.5

1985

A specific right of reprographic reproduction should not be introduced.

CRC 24, p.21

1984

The reproduction of copyright works by reprography will remain an infringement of copyright in the new law... the onus for enforcing existing rights would continue to lie with copyright owners.

GT pp.40-41

1977

That photocopying not be subject of any specific provision.

CC p.165

20. Sound Recordings

1977

That the copyright in a musical work be considered infringed when a sound recording is duplicated without authorization, even where other conditions for the issuance of a compulsory licence have been met.

CC p.100

That for greater certainty, any new Act specify that, where the conditions of the licence are not met, the licence cannot issue, and in such a case mechanical reproduction of the work is an infringement.

CC p.105

21. Three-Dimensional Objects from Two-Dimensional Works

1977

That the making of a three-dimensional object of a two-dimensional artistic work not constitute an infringement if the object made is not a reproduction of the original work.

CC p.169

RETRANSMISSION

S.C. 1988, c. 65, s.63

1996

16. 1988, c. 65, s. 3

Section 28.01 of the Act is renumbered as section 31 and that section and the heading before it are repositioned accordingly and that heading is replaced by the following:

Retransmission.

Bill C-32 1996, s. 16

28.01 (1) Interpretation

In this section,

"retransmitter" does not include a person who uses Hertzian waves to retransmit a signal does not perform a function comparable to that of a cable retransmission system;

"signal" means a signal that carries a literary, dramatic, musical or artistic work and is transmitted for free reception by the public by a terrestrial radio or terrestrial television station.

S.C. 1988, c. 65, s.63

28.01 (2) Retransmission of local signals

It is not an infringement of copyright to communicate to the public by telecommunication any literary, dramatic, musical or artistic work if

(a) the communication is a retransmission of a local or distant signal;

(b) the retransmission is lawful under the *Broadcasting Act*;

(c) the signal is retransmitted simultaneously and in its entirety, except as otherwise required or permitted by or under the laws of Canada; and,

(d) in the case of the retransmission of a distant signal, the retransmitter has paid any royalties, and compiled with any terms and conditions, fixed under this Act.

S.C. 1988, c. 65, s.63

28.01 (3) Regulations

The Governor in Council may make regulations defining "local signal"

and "distant signal" for the purposes of this section.

S.C. 1988, c. 65, s.63

1986

The government accepts this recommendation in principle. Apart from the right of reproduction recognized under the present Act, regardless of their national origin, the new Act will grant them public performance, transmission and retransmission rights. The conditions and mechanism for extending these new rights to sound recordings of foreign origin as suggested in recommendation 65 will, however, be defined in the Act.

GRCRC 65, p.10

The government agrees with the principles outlined in recommendation 97.

GRCRC 97, 100, p.15

1985

Public performance, transmission and retransmission rights should be extended only to nationals of those foreign countries which provide similar protection to Canadians.

CRC 65, p.51

A retransmission right should be provided in the revised law.

CRC 97, p.78

Where works are protected on a reciprocal basis, the owners of copyright should benefit from a retransmission right on a reciprocal basis.

CRC 98, p.78

The government should examine the desirability of bringing all broadcasting and retransmission activities under an expanded definition of a transmission right.

CRC 99, p.80

The right of retransmission should be defined in general terms and should not depend on current technology.

CRC 100, p.80

1984

Copyright owners will be provided with the necessary rights to control and exploit all transmission activities.

GT p.19

During the copyright revision process it became apparent that further consultation was required on whether compensation should be paid for the retransmission of copyright material.

GT p.89

1977

That in respect of the operations of cable systems the following cablecasting rights be provided in any new *Copyright Act*:

1. Diffusion (cable systems originate programmes);

(a) that copyright owners be provided a specific right to authorize the diffusion of their material by cable systems;

(b) that cable systems be provided protection in programmes they originate, analogous to protection provided broadcasters in their broadcasts.

2. Rediffusion (where cable systems simultaneously rediffuse broadcasts): that Canadian broadcasters be granted a right to authorize simultaneous rediffusion of their Canadian broadcasts.

3. Regulation of Rediffusion:

(a) that, as the granting of the foregoing right will entail determining a basis for and the payment of royalties, appropriate regulatory mechanisms be established.

(b) that the Copyright Tribunal fix the appropriate fees and establish the necessary safeguards to ensure the equitable assessment, collection and distribution of royalties to Canadians.

CC pp.143-4

INFRINGEMENT OF PERFORMERS' RIGHTS

S.C. 1994, c. 47, s. 60

1996

17. 1994, c. 47, s. 60

The heading before section 28.02 and sections 28.02 and 28.03 of the Act are repealed..

Bill C-32 1996, s. 17

28.02 (1) Infringement of performer's right

A performer's right in a performance shall be deemed to be infringed by any person who, without the consent of the owner of the performer's right, does anything that, by virtue of section 14.01, only the performer has the right to do.

S.C. 1994, c. 47, s. 60

28.02(2) Acts not constituting infringement

The following acts do not constitute an infringement of a performer's right in a performer's performance:

(a) any fair dealing with the performer's performance, a fixation thereof or a reproduction of the fixation, for the purposes of private study, research, criticism, review or newspaper summary;

(b) the making of a temporary fixation of the performer's performance for the purpose of doing an act permitted by paragraph 27(2)(e);

(c) reproducing a fixation of the performer's performance for the purpose of doing an act permitted by paragraph 27(2)(h), (i), (j) or (k);

(d) the retransmission of the performer's performance where, by virtue of subsection 28.01(2), the retransmission is not an infringement of copyright.

S.C. 1994, c. 47, s. 60

28.02 (3) Infringement by personal action

A performer's right in a performer's performance shall be deemed to be infringed by any person who

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire;

(b) distributes, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the performer's right,

(c) by way of trade exhibits in public, or

(d) imports for sale or hire into Canada

any fixation of the performer's performance, or any reproduction of such a fixation, that to the knowledge of that person infringes the performer's right.

S.C. 1994, c. 47, s. 60

28.03 (1) Certain rights and interests protected

Notwithstanding subsections 28.02(1) and (3), where a person has, before the later of the day on which this section comes into force and the day on which a country becomes a WTO Member, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed a performer's right under this Act commencing on the later of those two days, had that country been a WTO Member, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the later of those two days is not prejudiced or diminished by reason only that that country has become a

WTO Member except as provided by an order of the Board made under subsection 70.8(3).

S.C. 1994, c. 47, s. 60

1996

Compensation for Acts Done before Recognition of Copyright of Certain Performers

32.4 (1) Certain rights and interests protected

Notwithstanding section 27, where a person has, before the later of January 1, 1996 and the day on which a country becomes a WTO Member, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed copyright under section 26 commencing on the later of those days, had that country been a WTO Member, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the later of those days

is not prejudice or diminished by reason only that that country has become a WTO Member, except as provided by an order of the Board made under subsection 78(3).

Bill C-32 1996, s. 19

28.03 (2) Compensation

Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates if and when the owner of the performer's right pays that person such compensation as is agreed to between the parties or, failing agreement, as determined by the Board in accordance with section 70.8.

S.C. 1994, c. 47, s. 60

1996

32.4 (2) Compensation

Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates if and when the owner of the copyright pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 78.

Bill C-32 1996, s. 19

28.03 (3) Limitation

Nothing in subsections (1) and (2) affect any right of a performer available in law or equity.

S.C. 1994, c. 47, s. 60

1996

32.4 (3) Limitation

Nothing in subsection (1) and (2) affects any right of a performer available in law or equity.

Bill C-32 1996, s. 19

MORAL RIGHTS INFRINGEMENT

S.C. 1988, c. 15, s. 6;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 6

28.1 Infringement generally

Any act or omission that is contrary to any of the moral rights of the author of a work is, in the absence of consent by the author, an infringement of the moral rights.

Bill C-60 1987, s. 6;

S.C. 1988, c. 15, s. 6;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 6.

28.2 (1) Nature of right of integrity

The author's right to the integrity of a work is infringed only if the work is, to the prejudice of the honour or reputation of the author,

(a) distorted, mutilated or otherwise modified; or

(b) used in association with a product, service, cause or institution.

Bill C-60 1987, s. 6;

S.C. 1988, c. 15, s. 6;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 6

28.2 (2) Where prejudice deemed

In the case of a painting, sculpture or engraving, the prejudice referred to in subsection (1) shall be deemed to have occurred as a result of any distortion, mutilation or other modification of the work.

S.C. 1988, c. 15, s. 6;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 6

1987

In the case of an artistic work, other than an architectural work of art, the prejudice referred to in subsection (1) shall be deemed to have occurred as a result of any distortion, mutilation or other modification of the work.

Bill C-60 1987, s. 6, p.4

28.2 (3) When work not distorted, etc.

For purposes of this section,

(a) a change in the location of a work, the physical means by which a work is exposed or the physical structure containing a work, or

(b) steps taken in good faith to restore or preserve the work

shall not, by that act alone, constitute a distortion, mutilation or other modification of the work.

Bill C-60 1987, s. 6;
S.C. 1988, c. 15, s. 6;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 6

COMPENSATION FOR RESTORATION OF COPYRIGHT OR MORAL RIGHTS

S.C. 1994, c. 47, s. 60

1996

18. 1994, c. 47, s. 61

Section 29 of the Act and the heading
before it are replaced by the following:

Bill C-32 1996, s. 18
see current s. 27(2)(a)

29. (1) Certain rights and interests protected

Notwithstanding subsections 27(1), (4) and (5) and sections 28.1 and 28.2, where a person has, before a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed the copyright owner's copyright or the author's moral rights had that country been a treaty country, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable at the time when that country becomes a treaty country

is not prejudiced or diminished by reason only that that country has become a treaty country except as provided by an order of the Board made under subsection 70.8(3).

S.C. 1994, c. 47, s. 61

1996

Compensation for Acts Done before
Recognition of Copyright
or Moral Rights

33. (1) Certain rights and interests
protected

Notwithstanding subsections 27(1), (2) and (4) and sections 27.1, 28.1 and 28.2, where a person has, before the later of January 1, 1996 and the day on which a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed a copyright owner's copyright or an author's moral rights, had that country been a treaty country, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the later of those days

is not prejudice or diminished by reason only that that country has become a treaty country, except as provided by an order of the Board made under subsection 78(3).

Bill C-32 1996, s. 19

29. (2) Compensation

Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or the author, if and when the copyright owner or the author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as determined by the Board in accordance with section 70.8.

S.C. 1994, c. 47, s. 61

1996

33. (2) Compensation

Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or the author, if and when the owner of the copyright or author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 78.

Bill C-32 1996, s. 19

REPEALED

R.S. 1985 (1988), c. 10 (4th Supp.), s. 7

Making in Canada of Records, etc.

(no major heading in Act)

29. (1) Repealed [Making in Canada of records, etc.]

S.C. 1988, c. 15, s. 7;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 7

1921-1985

29. (1) [When making in Canada, of recordings, etc., not infringement] ^{I II III} [When making in Canada of recordings, etc., no infringement] ^{IV} Making in Canada of records, etc.

It shall not be deemed to be an infringement of copyright in any musical, literary or dramatic work for any person to make within Canada records, perforated rolls, or other contrivances, by means of which sounds may be reproduced and by means of which the work may be mechanically performed, if such person proves

(a) that [such] ^{I II III IV} the contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and,

(b) [that he has given] ^{I II III IV} that that person has given the prescribed notice of his intention to make the contrivances, and that there has been paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect [of all such contrivances] ^{I II III IV} of all the contrivances sold by him, [as hereinafter mentioned:] ^{I II III IV} in accordance with subsection (5).

S.C. 1921, c. 24, s. 18(1) ^I;
R.S. 1927, c. C-32, s. 19(1) ^{II};
R.S. 1952, c. C-55, s. 19(1) ^{III};
R.S. 1970, c. C-30, s. 19(1) ^{IV};
R.S. 1985, c. C-42, s. 29(1)

1987

Section 19 of the said Act is repealed.

Bill C-60 1987, s. 7, p. 4

1986

The government accepts this recommendation in principle but will ensure that it is implemented in a flexible manner and will adopt the appropriate transition mechanism if required.

GRCRC 42, p. 7

1985

The revised law should not retain the compulsory licence for the making of sound recordings.

CRC 42, p. 35

1984

The present compulsory licensing provisions for the recording of literary, dramatic and musical works will be abolished.

GT p. 36

1977

That the compulsory licensing provision apply to any musical work that has been the subject of a recording issued for retail sale and made by or with the consent of the copyright owner.

That the compulsory licensing provision extend only to the making of sound recordings intended for retail sale.

CC p. 94

That it be specified in any new Act that a film sound track is not sound recording for the purposes of compulsory licensing for mechanical reproduction.

That, as a condition of the issuance of a compulsory licence to mechanically reproduce a musical work, the musical work must have been embodied in a sound recording previously made in, or imported into, Canada for the purposes of retail sale, by or with the consent of the copyright owner of the musical work.

CC p. 96

That the notice required by s. 19(1)(b) and Rule 21(2) be retained with the addition of the following information:

(a) a warning to the copyright owner of his obligation to answer in the following ten days and of the consequences of failing to do so;

(b) information on how many sound recordings the manufacturer intends to make.

That Rule 22 be replaced by a provision to the effect that no recordings are to be delivered to a buyer before the notice has been answered or before the expiration of the period to give such an answer, whichever comes first.

CC p. 97

That, upon being served a notice of intention to make sound recordings, the copyright owner have ten days to answer on a form prescribed by regulations, which form shall provide the manufacturer with an address where he must effect payment of mechanical royalties.

That the payment of royalties be made on a monthly basis, and be accompanied by a detailed statement of account, certified by a chartered accountant carrying on business in Canada.

That failure on the part of the copyright owner to answer the notice within the ten-day period enable the manufacturer to deposit royalties and statements in trust and in a manner prescribed by regulation.

CC p. 98

That mechanical royalties be paid for very contrivance made under compulsory licence.

CC p. 99

29. (2) Repealed [When alterations necessary for adaptation to contrivance]

S.C. 1988, c. 15, s. 7;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 7

1921-1985

29. (2) [Proviso] ^{I II} When alterations necessary for adaptation to contrivance

[Provided that, -

(i) nothing in this provision shall authorize any] I II Nothing in subsection (1) authorizes any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless [such alterations] I II III IV the alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question. [; and,] I II

S.C. 1921, c. 24, s. 18(1)(b)(i) I;
R.S. 1927, c. C-32, s. 19(1)(b)(i) II;
R.S. 1952, c. C-55, s. 19(2) III;
R.S. 1970, c. C-30, s. 19(2) IV;
R.S. 1985, c. C-42, s. 29(2)

1977

That the substance of present s
19(2) be maintained in any new Act.

CC p.100

29. (3) Repealed [Contrivances not included]

S.C. 1988, c. 15, s. 7;

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1985

29. (3) [Musical work defined] I II III

Contrivances not included

[(ii) for the purposes of this provision, a] I II

For the purposes of subsection (1), a musical, literary or dramatic work shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced. [; and,] I II

S.C. 1921, c. 24, s. 18(1)(b)(ii) I;
R.S. 1927, c. C-32, s. 19(1)(b)(ii) II;
R.S. 1952, c. C-55, s. 19(3) III;
R.S. 1970, c. C-30, s. 19(3);
R.S. 1985, c. C-42, s. 29(3)

1977

That the principle behind s. 19(3) be retained, but the wording changed to accord with previous recommendations concerning sound recordings.

That the copyright in a musical work be considered infringed when a sound recording is duplicated without authorization, even where the other conditions for the issuance of a compulsory licence have been met.

CC p.100

29. (4) Repealed [Manuscript arrangements]

S.C. 1988, c. 15, s. 7;

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1985

29. (4) [no margin heading] I II Manuscript arrangements

[(iii) the making of] I II The making of the necessary manuscript arrangement and instrumentations of the copyrighted work, for the sole purpose of the adaptation of the

work to the contrivances in question, shall not be deemed an infringement of copyright.

S.C., 1921, c. 24, s. 18(1)(iii) I;
R.S. 1927, c. C-32, s. 19(1)(iii) II;
R.S. 1952, c. C-55, s. 19(4);
R.S. 1970, c. C-30, s. 19(4);
R.S. 1985, c. C-42, s. 29(4)

1977

That the substance of Section
19(4) be retained in any new Act.

CC p.101

29. (5) Repealed [Rates of royalties]

S.C. 1988, c. 15, s. 7;

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

29. (5) Rates of royalties

The royalty [as aforesaid shall be two] I II

III mentioned in subsection (1) shall be two cents for each playing surface of each [such] I II III IV record and two cents for each [such] I II III IV perforated roll or other contrivance.

S.C. 1921, c. 24, s. 18(2) I;
R.S. 1927, c. C-32, s. 19(2) II;
R.S. 1952, c. C-55, s. 19(5) III;
R.S. 1970, c. C-30, s. 19(5) IV;
R.S. 1985, c. C-42, s. 29(5)

1977

That the royalty payable under a compulsory licence be fixed at a percentage of the retail selling price.

That the royalty rate be regularly reassessed and revised. This task could be the responsibility of the Copyright Tribunal.

CC p.103

29. (6) Repealed [Apportionment of royalties when several owners]

S.C. 1988, c. 15, s. 7;

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

29. (6) Apportionment of royalties when several owners

[If any] I II Where any [such] I II III IV contrivance is made reproducing on the same playing surface two or more different works in which copyright subsists, and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned [amongst the] I II III among the several owners of the copyright equally.

S.C. 1921, c. 24, s. 18(3) I;
R.S. 1927, c. C-32, s. 19(3) II;
R.S. 1952, c. C-55, s. 19(6) III;
R.S. 1970, c. C-30, s. 19(6) IV;
R.S. 1985, c. C-42, s. 29(6)

1977

That, where two or more works are reproduced on the same sound recording, and where the copyright owners are different persons, the royalty should be apportioned among the different owners on the basis of the ratio of the duration of each work to the total duration of the sound recording.

CC p.104

30. (1) Repealed [Provisions respecting musical works heretofore published]

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

30. (1) [Provisions as to musical works heretofore published] ^{I II III IV} Provisions respecting musical works heretofore published

In the case of musical, literary or dramatic works published [before the commencement of this Act, the foregoing provisions shall have effect, subject to] ^I [before the first day of January, one thousand nine hundred and twenty-four, the foregoing provisions shall have effect,] ^{II} [before the 1st day of January 1924, the foregoing provisions shall have effect,] ^{III IV} before January 1, 1924, section 29 shall have effect, subject to the following modifications and additions:

R.S. 1921, c. 24, s. 18(6) ^I;
R.S. 1927, c. C-32, s. 19(6) ^{II};
R.S. 1952, c. C-55, s. 19(9) ^{III};
R.S. 1970, C-30, s. 19(9) ^{IV};
R.S. 1985, c. C-42, s. 30(1)

30. (1)(a) Repealed [Conditions as to making and restrictions as to alterations] ^{I II III}

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

30. (1)(a) [Conditions as to making and restrictions as to alterations] ^{I II III}

The conditions [as to] ^{I II III IV} with respect to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions [as to] ^{I II III IV} with respect to alterations in or omissions from the work [shall not] ^{I II} do not apply;

R.S. 1921, c. 24, s. 18(6)(a) ^I;
R.S. 1927, c. C-32, s. 19(6)(a) ^{II};
R.S. 1952, c. C-55, s. 19(9)(a) ^{III};
R.S. 1970, C-30, s. 19(9)(a) ^{IV};
R.S. 1985, c. C-42, s. 30(1)(a)

30. (1)(b) Repealed [Property of author and not of assignee] ^{I II III}

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

30. (1)(b) [Property of author and not of assignee] ^{I II III}

Notwithstanding any assignment made before [the passing of this Act of the] ^I [the fourth day of June, one thousand nine hundred and twenty one of the] ^{II} [the 4th day of June 1921 of the] ^{III} ^{IV} June 4, 1921 of the copyright in a literary or dramatic or musical work, any rights conferred by this Act in respect of the making, or authorizing the making, of contrivances by means of which the work may be mechanically performed, shall

belong to the author [or his legal representatives and not] ^{I II III IV} or the legal representatives of the author and not to the assignee, and the royalties [aforesaid shall be] ^{I II III IV} shall be payable to, and for the benefit of, the author of the work [or his legal representatives.] ^{I II III IV} or the legal representatives of the author.

R.S. 1921, c. 24, s. 18(6)(c) ^I;
R.S. 1927, c. C-32, s. 19(6)(c) ^{II};
R.S. 1952, c. C-55, s. 19(9)(c) ^{III};
R.S. 1970, C-30, s. 19(9)(c) ^{IV};
R.S. 1985, c. C-42, s. 30(1)(b)

1921-1985 *

19. (9) [Royalties altered] ^{I II III}

No royalties [shall be payable in] ^{I II} are payable in respect of contrivances lawfully made and sold by the manufacturer [before commencement of this Act;] ^I [before the first day of January, one thousand nine hundred and twenty-four;] ^{II} before the 1st day of January 1924;

R.S. 1921, c. 24, s. 18(6)(b) ^I;
R.S. 1927, c. C-32, s. 19(6)(b) ^{III};
R.S. 1952, c. C-55, s. 19(9)(b);
R.S. 1970, C-30, s. 19(9)(b):
* absent in R.S. 1985, c. C-42

1977

That the necessary transitional provisions be incorporated in any new Act.

CC p.231

30. (2) Repealed [Copyright deemed to exist at date of making of original plate]

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1985-1988

30. (2) Copyright deemed to exist at date of making of original plate

Notwithstanding anything in this Act, where a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced has been made before January 1, 1924, copyright shall, from that date, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived, and the person who on January 1, 1924, is the owner of the original plate shall be the first owner of the copyright.

R.S. 1985, c. C-42, s. 30(2)

1952-1985

19. (10) Copyright deemed to exist at date of making of original plate

Notwithstanding anything in this Act, where a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced has been made before the 1st day of January, 1924, copyright shall, as from the said date, subsist therein in like manner and for the

like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived; he person who on the 1st day of January, 1924, is the owner of such original plate shall be the first owner of such copyright; and nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first mentioned contrivance.

R.S. 1952, c. C-55, s. 19(10);
R.S. 1970, C-30, s. 19(10)

1921-1952

19. (7) Copyright deemed to exist at date of making of original plate

Notwithstanding anything in this Act, where a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced has been made before [the commencement of this Act, copyright shall, as from the commencement of this Act, subsist] ^I the first day of January, one thousand nine hundred and twenty-four, copyright shall, as from the said date, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived.

Proviso

Provided that

(i) the person who, [at the commencement of this Act,] ^I on the first day of January, one thousand nine hundred and twenty-four, is the owner of such original plate shall be the first owner of such copyright; and,

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first- mentioned contrivance.

R.S. 1921, c. 24, s. 18(7) ^I;
R.S. 1927, c. C-32, s. 19(7)

30. (3) Repealed [Restriction]

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

30. (3) [Proviso] ^{I II} Restriction

[ii] ^{I II} Nothing [in this provision shall] ^{I II} in subsection (2) shall be construed as

conferring copyright in any contrivance if the making thereof would have infringed copyright in some other contrivance, [if this provision had] been ^{I II} if that subsection had been in force at the time of the making of the first-mentioned contrivance.

R.S. 1921, c. 24, s. 18(7)(ii) ^I;
R.S. 1927, c. C-32, s. 19(7)(ii) ^{II};
R.S. 1952, c. C-55, s. 19(10);
R.S. 1970, C-30, s. 19(10)
R.S. 1985, c. C-42, s. 30(3)

31. Repealed [Contrivances made for persons unable to read print]

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1981- 1988

31. Contrivances made for persons unable to read print

For the purposes [of this section,] ^I of sections 29 and 30, a record, perforated roll or other contrivance by means of which sounds may be reproduced and by means of which a literary or dramatic work may be mechanically performed made within Canada with the consent or acquiescence of the owner of the copyright in the work and intended for and primarily distributed to persons unable to read print because of a physical handicap is deemed not to be a contrivance made with the consent or acquiescence of the owner of the copyright in the work.

S.C. 1981, c. 47, s. 9 ^I;
R.S. 1985, c. C-42, s. 31

32. Repealed [When owner deemed to consent to making of contrivances]

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

32. When owner deemed to consent to making of contrivances

When any [such] ^{I II III IV} contrivances by means of which a literary, dramatic or musical work may be mechanically performed have been made, then for the purposes [of this section] ^{I II III IV} of sections 29 to 31, the owner of the copyright in the work shall, in relation to any person who makes the prescribed [enquiries] ^{I II III} inquiries, be deemed to have given his consent to the making [of such] ^{I II III} of the contrivances if he fails to reply to [such enquiries] ^{I II III} [such inquiries] ^{IV} those inquiries within the prescribed time.

R.S. 1921, c. 24, s. 18(4) ^I;
R.S. 1927, c. C-32, s. 19(4) ^{II};
R.S. 1952, s. 19(7) ^{III};
R.S. 1970, c. C-30, s. 19(7) ^{IV};
R.S. 1985, c. C-42, s. 32

1977

That the inquiry in s. 19(7) be retained.

That the inquiry be made in the form presently designated in Rules 24 to 27, with the additional requirement that the copyright owner be informed of the 14 day answer period as well as of the presumption of consent which arises if he fails to answer within the time period.

That the Act specify that such presumption is only a presumption that consent was given to make a previous recording.

That the Act also specify that an inquiry under this section does not, in itself, constitute a notice of intention to make.

CC pp.98-99

33. Repealed [Regulation and notices by Governor in Council]

R.S. 1985 (1988), c. 10 (4th Supp.), s.7

1921-1988

33. Regulation and notices by Governor in Council

For the purposes [of this section,] ^I ^{II} ^{III} ^{IV} of sections 29 to 32, the Governor in Council may make regulations prescribing anything [which under this section] ^I ^{II} [that under this section] ^{III} ^{IV} that under those sections is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in [such] ^I ^{II} ^{III} ^{IV} the notices, and the mode, time and frequency of the payment of royalties, and [any such regulations may,] ^I ^{II} ^{III} ^{IV} the regulations may, if the Governor in Council thinks fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

R.S. 1921, c. 24, s. 18(5) ^I ;
R.S. 1927, c. C-32, s. 19(5) ^{II} ;
R.S. 1952, s. 19(8) ^{III} ;
R.S. 1970, c. C-30, s. 19(8) ^{IV} ;
R.S.1985, c. C-42, s. 33

1977

That the substance of present s. 19(8) be retained in any new Act.

CC p.105

CIVIL REMEDIES

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

34. (1) Civil remedies

Where copyright in any work has been infringed, the owner of the copyright [shall, except as otherwise provided by this Act, be entitled to all such remedies] ^{I II} [is, except as otherwise provided by this Act, entitled to all such remedies] ^{III IV} is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts and otherwise, [as are or] ^{I II III IV} that are or may be conferred by law for the infringement of a right.

S.C. 1921, c. 24, s. 19(1) ^I;
R.S. 1927, c. C-32, s. 20(1) ^{II};
R.S. 1952, c. C-55, s. 20(1) ^{III};
R.S. 1970, c. C-30, s. 20(1) ^{IV};
R.S. 1985, c. C-42, s. 34(1)

1996

34. (1) Copyright

Where copyright has been infringed, the owner of the copyright is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

Bill C-32 1996, s. 20(1)

1986

The government agrees with these recommendations in principle.

GRCRC 132, 133, 137, p.18

1985

The definition of what constitutes copyright infringement should be reviewed.

CRC 132, p.98

The existing system of civil remedies should be used as the basis for revision.

CRC 133, p.98

Study should be made of the feasibility of extending pre-judgement procedures presently available only in one or the other of Canada's legal systems, to both systems.

CRC 137, p.98

1984

Individual copyright owners, exclusive licensees and copyright societies will be entitled to sue and obtain injunctions if either individual works or a repertoire suffer infringement.

GT p.70

1977

That the principles in s. 20(1) also be maintained in any new Act, specifically: any person deriving an interest in a copyright is entitled, to the extent of that interest, to all such

remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right, insofar as these remedies are consistent with other provisions of the Copyright Act.

That it not be a defence to an action of infringement for a person to tender, after the fact, licence fees which, according to the licence, could only have been paid before a use which was otherwise prohibited.

CC p.194

34. (1.01) Performers' Rights

In any proceedings for infringement of a performer's right, the court may, subject to subsection (1.02), grant to the owner of the performer's right all remedies by way of injunction, damages, accounts or delivery up and otherwise that are or may be conferred by law for the infringement of a right.

S.C. 1994, c. 47, s. 62

34. (1.02) Limitations

Where a performer has assigned to any extent a performer's right, or has granted an interest in a performer's right by licence, and subsequently institutes proceedings described in paragraph 14.01(7)(a) or (b), the court may not grant to the performer, in relation to the right assigned or interest granted, any remedy otherwise than by way of injunction or delivery up.

S.C. 1994, c. 47, s. 62

34. (1.03) Other parties may be joined

In any proceedings for an infringement of a performer's right, the court may, on application by the performer, an assignee of the performer's right, a person to whom an interest in the performer's right has been granted by licence, or the defendant, order such other parties to be joined in the proceedings as the court considers necessary.

S.C. 1994, c. 47, s. 62

34. (1.1) Moral rights

In any proceedings for an infringement of a moral right of an author, the court may grant to the author all remedies by way of injunction, damages, accounts or delivery up and

otherwise that are or may be conferred by law for the infringement of a right.

S.C. 1988, c. 15, s. 8;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 8

1996

34. (2) Moral Rights

In any proceedings for an infringement of a moral right of an author, the court may grant to the author or to the person who holds the moral rights by virtue of subsection 14.2(2) or (3), as the case may be, all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

Bill C-32 1996, s. 20(1)

1987

Section 20 of the said Act is amended by adding thereto, immediately after subsection(1), the following subsection:

(1.1) In any proceedings for an infringement of the moral rights of an author, the author is entitled to all such remedies that under this Act may be granted for an infringement of copyright.

Bill C-60 1987, s. 8 pp. 4-5

1986

The government agrees with this recommendation in principle.

GRCRC 3, p.2

1985

All remedies for infringement of an economic right should be available for infringement of a moral right.

CRC 3, p.8

1977

That remedies for infringement of moral rights be the same as those granted for the protection of pecuniary rights, including injunctions and damages.

CC p.59

That infringement of a moral right give rise to all remedies such as injunctions, damages, accounts and otherwise as are or may be conferred by law for the infringement of any other right.

CC p.195

34. (2) Costs

The cost of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the court.

S.C. 1921, c. 24, s. 19(2);

R.S. 1927, c. C-32, s. 20(2);

R.S. 1952, c. C-55, s. 20(2);

R.S. 1970, c. C-30, s. 20(2);

R.S. 1985, c. C-42, s. 34(2)

1996

34. (3) Costs

The costs of all parties in any proceedings in respect of the infringement of a right conferred by this Act shall be in the discretion of the court.

34. (4) Civil proceedings

Proceedings for infringement of copyright or moral rights, or any

proceedings taken under section 44.1, 44.2 or 44.4, may be commenced or proceeded with by way of application or action and shall, in the case of an application, be heard and determined without delay and in a summary way.

34. (5) Practice and procedure

The rules of practice and procedure, in civil matters, of the court in which proceedings are commenced by way of application apply to those proceedings, but where those rules do not provide for the proceedings to be heard and determined without delay and in a summary way, the court may give such directions as it considers necessary in order to so provide.

34. (6) Actions

The court in which proceedings are instituted by way of application may, where it considers it appropriate, direct that the proceeding be proceeded with as an action.

34. (7) Meaning of "application"

In this section, "application" means a proceeding that is commenced other than by way of a writ or statement of claims.

Bill C-32 1996, s. 20(1)

34. (3) Presumptions respecting copyright and ownership

[In any] ^I ^{II} ^{III} Where any action for infringement of copyright in any work in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff thereto, [then, in any such case,] ^I ^{II} ^{III}

(a) the work shall, unless the contrary is proved, be presumed to be a work in which copyright subsists; and

(b) the author of the work shall, unless the contrary is proved, be presumed to be the owner of the copyright. [; Provided that] ^I [; and where] ^{II} ^{III}

S.C. 1931, c. 8, s. 7 ^I;

R.S. 1952, c. C-55, s. 20(3) ^{II};

R.S. 1970, c. C-30, s. 20(3) ^{III};

R.S. 1985, c. C-42, s. 34(3)

1921-1931

19(3) Presumptions as to copyright and ownership

In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of

the plaintiff, and where any such question is at issue, then,

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work; [and]

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

S.C. 1921, c. 24, s 19(3)

R.S. 1927, c. C-32, s. 20(3)

1996

34.1 (1) Presumptions respecting copyright and ownership

In any proceedings for infringement of copyright in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff thereto,

(a) copyright shall be presumed, unless the contrary is proved, to subsist in the work, performer's performance, sound recording or communication signal, as the case may be; and

(b) the author, performer, maker or broadcaster, as the case may be, shall, unless the contrary is proved, be presumed to be the owner of the copyright.

Bill C-32 1996, s. 20(1)

1986

The government agrees with the recommendation in principle.

GRCRC 131, p.17

1985

The legal effect of a certificate of registration should be to establish two rebuttable presumptions: that copyright subsists in the work and that the person named as owner on the certificate of registration is the owner of the copyright in the work.

CRC 131, p.96

1984

In copyright proceedings, a work will be presumed to be in copyright and the plaintiff will be presumed to have the right to sue, unless prior to trial, opposing parties obtain leave to contest the issue.

The new Act will provide that the person whose name appears on the face of a copyright work is presumed to be the author in the absence of proof to

the contrary. The presumption will apply to authors, publishers or plaintiffs claiming under them.

GT p.70

The evidentiary advantages that might be associated with registration could be achieved at no cost through statutory presumptions favouring the plaintiff, particularly with respect to ownership. The new Act will include presumptions that the work is protected by copyright and that in court proceedings the plaintiff is the owner of the copyright.

GT p.73

1977

That the present rebuttable presumption in s 20(3)(a) concerning the existence of copyright be retained in any new Act: where the existence of copyright, or title thereof, is put in issue, the work is presumed to be in copyright. Similarly, that the present rebuttable presumption in s. 20(3)(b) concerning authorship be retained in any new Act: where the work bears a name purporting to be that of the author, the person whose name is indicated shall be presumed to be the author of the work,

That there be a rebuttable presumption of copyright ownership in favour of the plaintiff, rather than in favour of the author.

That, in order to assist in proving ownership, in the absence of a registration system, there be a statutory right to enter assignment documents as evidence, as well as a *prima facie* presumption that such documents reflect the truth of their contents.

CC pp.182-183

34. (4) Idem

[; Provided that where any such question is at issue,] ^I [and where any such question is at issue,] ^{II} ^{III} Where any question referred to in [subsection (2)] ^{IV} subsection (3) is at issue, and no grant of the copyright or an interest in the copyright, either by assignment or licence, has been registered under this Act, [then, in any such case] ^I ^{II} ^{III}

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work; [and] ^{II} ^{III} ^{IV} ^V ^{VI}

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work

is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

S.C. 1931, c. 8, s. 7 ⁱ;
R.S. 1952, c. C-55, s. 20(3) ⁱⁱ;
R.S. 1970, c. C-30, s. 20(3) ⁱⁱⁱ
R.S. 1985, c. C-42, s. 34(4) ^{iv};
S.C. 1993, c. 15, s. 3; ^v;
S.C. 1993, c. 44, s. 65(1) ^{vi}

(c) if, on a cinematograph, a name purporting to be that of the maker of the cinematograph appears in the usual manner, the person so named shall, unless the contrary is proved, be presumed to be the maker of the cinematograph.

S.C. 1993, c. 44, s. 65(2)

1996

34. (2) Where no grant registered

Where any matter referred to in subsection (1) is at issue and no assignment of the copyright, or licence granting an interest in the copyright, has been registered under this Act,

- (a) if a name purporting to be that of
 - i - the author of the work,
 - ii - the performer of the performer's performance,
 - iii - the maker of the sound recording, or
 - iv - the broadcaster of the communication signal

is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author, performer, maker or broadcaster;

- (b) if
 - i - no name is so printed or indicated, or if the name so printed or indicated is not the true name of the author, performer, maker or broadcaster or the name by which that person is commonly known, and
 - ii - a name purporting to be that of the publisher or owner of the work, performer's performance, sound recording or communication signal is printed or otherwise indicated thereon in the usual manner,

the person whose name is printed or indicated as described in subparagraph (ii) shall, unless the contrary is proved, be presumed to be the owner of the copyright in question; and

(c) if, on a cinematographic work, a name purporting to be that of the maker of

the cinematographic work appears in the usual manner, the person so named shall, unless the contrary is proved, be presumed to be the maker of the cinematographic work.

Bill C-32 1996, s. 20(1)

35. (1) [Assessment of Damages] ⁱ ⁱⁱ ⁱⁱⁱ

Liability for infringing copyright

[If any person shall infringe] ⁱ Where any person infringes the copyright in any work [which] ⁱ that is protected under [the provisions of] ⁱ ⁱⁱ this Act, [such person shall be] ⁱ [such person is] ⁱⁱ ⁱⁱⁱ the person is liable to pay such damages to the owner of the right infringed as he may have suffered due to the infringement, and in addition thereto such part of the profits [which] ⁱ that the infringer [shall have made] ⁱ has made [from such infringement] ⁱ ⁱⁱ ⁱⁱⁱ from the infringement as the court may decide to be just and proper. [and in proving] ⁱ ⁱⁱ ⁱⁱⁱ

S.C. 1931, c. 8, s. 7 ⁱ;
R.S. 1952, c. C-55, s. 20(4) ⁱⁱ;
R.S. 1970, c. C-30, s. 20(4) ⁱⁱⁱ;
R.S. 1985, c. C-42, s. 35(1)

1996

35. (1) Liability for infringement

Where a person infringes copyright, the person is liable to pay such damages to the owner of the copyright as the owner has suffered due to infringement and, in addition to those damages, such part of the profits that the infringer has made from the infringement and that were not taken into account in calculating the damages as the court considers just.

Bill C-32 1996, s. 20(1)

35. (2) Proof of profits

[and in proving] ⁱ ⁱⁱ ⁱⁱⁱ In proving profits the plaintiff shall be required to prove only receipts or revenues derived from the publication, sale or other disposition of an infringing work, or from any unauthorized performance of the work in which copyright subsists, and the defendant shall be required to prove every element of cost [which] ⁱ ⁱⁱ that he claims.

S.C. 1931, c. 8, s. 7 ⁱ;
R.S. 1952, c. C-55, s. 20(4) ⁱⁱ;
R.S. 1970, c. C-30, s. 20(4) ⁱⁱⁱ;
R.S. 1985, c. C-42, s. 35(2)

1996

35.(2) Proof of profits
In proving profits

(a) the plaintiff shall be required to prove only receipts or revenues derived from the infringement; and

(b) the defendant shall be required to prove every element of cost that the defendant claims.

Bill C-32 1996, s. 20(1)

36. (1) Protection of separate rights

The author or [other] ^{I II III} owner of any copyright or any person or persons deriving any right, title or interest by assignment or grant in writing from any author or other owner [, as aforesaid,] ^{I II III} may each, individually, for himself, in his own name as party to a suit, action or proceeding, protect and enforce such rights as he may hold, and to the extent of his right, title and interest is entitled to the remedies provided by this Act.

S.C. 1931, c. 8, s. 7 ^I;
R.S. 1952, c. C-55, s. 20(5) ^{II};
R.S. 1970, c. C-30, s. 20(5) ^{III};
R.S. 1985, c. C-42, s. 36

1996

36. (1) Protection of separate rights

Subject to this section, the owner of any copyright, or any person or persons deriving any right, title or interest by assignment or grant in writing from any owner, may each, individually for themselves, in their own name as party to proceedings, protect and enforce such rights as they may hold, and, to the extent of their right, title and interest, is entitled to the remedies provided by this Act.

Bill C-32 1996, s. 20(1)

1977

That the principles in s. 20(5) also be maintained in any new Act, specifically: the author or owner of any copyright or any person deriving any right, title or interest by assignment or grant in writing from any author or other owner as aforesaid, may each, individually for himself, in his own name as party to a suit, action, or other proceeding, protect and enforce such rights as he may hold.

CC p.193

36. (2) Protection of separate rights

Subsection (1) applies in respect of a performer and in respect of the owner of a performer's right conferred by this Act, in the same way that that subsection applies in respect of persons described therein.

S.C. 1994, c. 47, s. 63

1996

36.(2) Where copyright owner to be made party

Where proceedings referred to in subsection (1) are taken by a person other

than the copyright owner, the copyright owner must be a party to the proceedings, except

(a) in respect of proceedings taken under section 44.1, 44.2 or 44.4;

(b) in respect of interlocutory proceedings unless the court is of the opinion that the interests of justice require the copyright owner to be a party; and

(c) in any other case, if the court is of the opinion that the interests of justice do not require the copyright owner to be a party.

36.(3) Owner's liability for costs

A copyright owner who is made a party to proceedings pursuant to subsection (2) is not liable for any costs unless the copyright owner takes part in the proceedings.

36.(4) Apportionment of damages, profits

Where a copyright owner is made a party to proceedings pursuant to subsection (2), the court, in awarding damages or profits, shall, subject to any agreement between the person who took the proceedings and the copyright owner, apportion the damages or profits referred to in subsection 35(1) between them as the court considers appropriate.

Bill C-32 1996, s. 20(1)

37. Concurrent jurisdiction of

[Exchequer Court] ^{I II III} Federal Court

[The Exchequer Court of Canada] ^{I II III}

The Federal Court shall have concurrent jurisdiction with provincial courts to hear and determine all civil actions, suits or proceedings [which] ^I that may be instituted for [violation] ^{I II III} contravention of any provisions of this Act or to enforce the civil remedies provided by this Act.

S.C. 1931, c. 8, s. 7 ^I;
R.S. 1952, c. C-55, s. 20(6) ^{II};
R.S. 1970, c. C-30, s. 20(6) ^{III};
R.S. 1970 (1972), c. 10 (2nd Supp.), s. 64;
R.S. 1985, c. C-42, s. 37

1996

37. Concurrent jurisdiction of Federal Court

The Federal Court has concurrent jurisdiction with provincial courts to hear and determine all proceedings, other than the prosecution of offenses under section 42 and 43, for the enforcement of a provision of this Act or of the civil remedies provided by this Act.

Bill C-32 1996, s. 20(1)

38. Ownership of copies and plates

All infringing copies of any work in which copyright subsists, or any substantial part thereof, and all plates

used or intended to be used for the production [of such] ^{I II III IV} of the infringing copies shall be deemed to be the property of the owner of the copyright, who accordingly, may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

S.C. 1921, c. 24, s. 20 ^I;
R.S. 1927, c. C-32, s. 21 ^{II};
R.S. 1952, c. C-55, s. 21 ^{III};
R.S. 1970, c. C-30, s. 21 ^{IV};
R.S. 1985, c. C-42, s. 38

1996

38. (1) Recovery of possession of copies, plates

Subject to subsection (2), the owner of the copyright in a work or other subject-matter may

(a) recover possession of all infringing copies of that work or other subject-matter, and of all plates used or intended to be used for the production of infringing copies; and

(b) take proceedings for seizure of those copies or plates before judgment if, under the law of Canada or of the province in which those proceedings are taken, a person is entitled to take such proceedings,

as if those copies or plates were the property of the copyright owner.

38. (2) Powers of court

On application by

(a) a person from whom the copyright owner has recovered possession of copies or plates referred to in subsection (1),

(b) a person against whom proceedings for seizure before judgment of copies or plates referred to in subsection (1) have been taken, or

(c) any other person who has an interest in those copies or plates, a court may order that those copies or plates be destroyed, or may make any other order that it considers appropriate in the circumstances.

38. (3) Notice to interested persons

Before making an order under subsection (2), the court shall direct that notice be given to any person who has an interest in the copies or plates in question, unless the court is of the opinion that the interests of justice do not require such notice to be given.

38. (4) Circumstances court to consider
In making an order under subsection (2), the court shall have regard to all the circumstances, including

(a) the proportion, importance and value of the infringing copy or plate, as compared to the substrate or carrier embodying it,

(b) the extent to which the infringing copy or plate is severable from, or a distinct part of, the substrate or carrier embodying it.

38. (5) Limitation

Nothing in this Act entitles the copyright owner to damages in respect of the possession or conversion of the infringing copies or plates.

Bill C-32 1996, s. 19

1984

Copyright owners will have an absolute right to seize or obtain the destruction of infringing plates or masters. They will also be allowed to seize and dispose of other infringing articles, subject to the rights of non-deliberate infringers to apply for an accounting of proceeds from the disposal of such articles, or for directions as to their disposal.

The court's power on such an application will be discretionary. They will include the power to order the return of infringing articles to non-deliberate infringers (upon payment of compensation) where justified by undue hardship to the defendant. In addition, the courts will be able to order a defendant to arrange the recall of goods.

GT p.69

1977

That a person, whether innocent or otherwise, be liable to deliver up infringing plates on notice, without compensation, or for damages if that person retains them.

That the guilty infringer also be liable to deliver up infringing copies on notice, without compensation, or for damages if he retains them.

That where the defendant is "innocent", the copyright owner be given the option of acquiring the infringing copies at cost, or of leaving them to be disposed of by the defendant, in which latter event the defendant would have to account to the copyright owner for the profits.

CC pp.194-195

39. Injunction only remedy when defendant not aware of copyright

Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff [shall not be] ^{I II} is not entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had no reasonable ground for suspecting that copyright subsisted in the work, [; Provided that if] ^{I II} but if at the date of the infringement the copyright in

the work was duly registered under this Act, the defendant shall be deemed to have had reasonable ground for suspecting that copyright subsisted in the work.

S.C. 1921, c. 24, s. 21 I;
R.S. 1927, c. C-32, s. 22 II;
R.S. 1952, c. C-55, s. 22;
R.S. 1970, c. C-30, s. 22;
R.S. 1985, c. C-42, s. 39

1996

39. (1) Injunction only remedy when defendant not aware of copyright

Subject to subsection (2), in any proceedings for infringement of copyright, the plaintiff is not entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that, at the date of the infringement, the defendant was not aware and had no reasonable ground for suspecting that copyright subsisted in the work or other subject-matter in question.

39. (2) Exception where copyright registered

Subsection (1) does not apply if, at the date of the infringement, the copyright was duly registered under this Act.

Bill C-32 1996, s. 20(1)

1984

It is proposed to remove the defence of innocence for people dealing in or importing infringing material. Strict liability will apply to all persons who interfere with the exclusive rights of the copyright owner and to all persons who deal in or import infringing works subject to specific limitations.

GT p.67

1977

That "innocence" be a defence only with regard to indirect infringement.

That, in any new Act, "innocence" not be interpreted as meaning ignorance of the existence of copyright but only as not knowing that what was done constituted an infringement, or of not having reasonable grounds for knowing that it would likely infringe.

That, where "innocence" is established, damages not be recoverable, but that all other remedies be available.

CC p.183

40. (1) No injunction in case of a building

Where the construction of a building or other structure [which infringes or which, if completed,] I II that infringes or that, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright [shall not be] I II is not entitled to obtain an injunction in respect to the construction

[of such] I II III IV of that building or structure or to order its demolition.

S.C. 1921, c. 24, s. 21(1) I;
R.S. 1927, c. C-32, s. 23(1) II;
R.S. 1952, c. C-55, s. 23(1) III;
R.S. 1970, c. C-30, s. 23(1) IV;
R.S. 1985, c. C-42, s. 40(1)

1977

That an injunction not be available where infringement occurs due to the construction or demolition of a building.

CC p.194

40. (2) Penalties not to apply

[Such of the other provisions of this Act as provide] I II III The other provisions of this Act [which provide] IV that provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, [or as impose] I II III or that impose summary penalties, [shall not] I II do not apply in any case to which this section applies.

S.C. 1921, c. 24, s. 22(2) I;
R.S. 1927, c. C-32, s. 23(2) II;
R.S. 1952, c. C-55, s. 23(1) III;
R.S. 1970, c. C-30, s. 23(2) IV;
R.S. 1985, c. C-42, s. 40(2)

1996

Section 40(2) of the Act is replaced by the following:

(2) Certain remedies inapplicable

Sections 38 and 42 do not apply in any case in respect of which subsection (1) applies.

Bill C-32 1996, s. 21

41. [Prescription of action] I II III IV [Limitation period] V Time limit for action

An action in respect of infringement [of copyright] I II III IV V shall not be commenced after the expiration of three years [next after] I II III IV immediately following the infringement.

S.C. 1921, c. 24, s. 223 I;
R.S. 1927, c. C-32, s. 24 II;
R.S. 1952, c. C-55, s. 23(2) III;
R.S. 1970, c. C-30, s. 24 IV;
R.S. 1985, c. C-42, s. 41 V;
Bill C-60 1987, s. 9;
S.C. 1988, c. 15, s. 9;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 9

1996

Section 41 of the Act is replaced by the following:

41. (1) Limitation period for civil remedies

Subject to subsection (2), a court may not award a remedy in relation to an

infringement unless

(a) in the case where the plaintiff knew, or could reasonably have been expected to know, of the infringement at the time it occurred, the proceedings for infringement are commenced within three years after the infringement occurred; or

(b) in the case where the plaintiff did not know, and could not reasonably have been expected to know, of the infringement at the time it occurred, the proceedings for infringement are commenced within three years after the time when the plaintiff first knew, or could reasonably have been expected to know, of the infringement.

41. (2) Restriction

The court shall apply the limitation period set out in paragraph (1)(a) or (b) only in respect of a party who pleads a limitation period.

Bill C-32 1996, s. 22(1)

1977

That the present limitation period of three years be maintained in any new Act.

CC p.195

CIVIL REMEDY NOT ADOPTED

1. Computer Machine-Readable Programs

1984

Persons infringing a machine-readable program will be liable only for the remedies for infringement of computer program copyright regardless of whether the computer program copyright is still owned by the owner of the copyright in the underlying human-readable program.

GT p.83

2. Declaratory Judgment

1984

The court's power to render declaratory judgments and grant exemplary damages will also be made explicit.

GT p.70

1977

That a right to a declaratory judgment be introduced as an addition to the remedies presently provided in s 20(1) .

CC p.195

3. Direct Infringement

1984

Direct infringers will continue to be liable for actual damages caused, regardless of their intent or knowledge.

GT pp. 68-69

4. Discovery

1977

That a statutory right of discovery be included in any new Act, whereby a copyright owner may, by court order, require anyone to disclose whether that

person has or has had possession, for commercial purpose, of a copy of any protected subject matter, and if so, to disclose from whom such copy was acquired.

CC p.194

5. Exemplary Damages

1984

The court's power to render declaratory judgments and grant exemplary damages will also be made explicit. To assist the courts in deciding whether to impose exemplary damages against deliberate infringers, the new Act will set forth a list of factors to be taken into account.

The list will be exemplary and not exhaustive; it will include the following:

- the actual damages suffered,
- the benefits enjoyed by the defendant,
- the flagrancy of the infringement,
- the need for deterrence,
- the value to the defendant or others of the material taken.

GT p.70

1977

That in assessing damages, the court be directed to take account the following criteria:

(a) the actual damages suffered by the plaintiff;

(b) the benefits which might have accrued to the infringer. In this respect, the court may order an account of profits;

(c) the flagrancy of the infringement, including repeated infringements of a related type;

(d) where the defence lacks merit, or where prelitigation conduct was uncooperative, the actual costs of the investigation, preparation and litigation;

(e) the need for deterrence and likelihood of a deterrent effect;

(f) such further criteria as shall be determined by regulation from time to time.

CC p.184

6. Indirect Infringement

1984

In this case the method of calculating statutory compensation will yield a precise amount suitable for immediate judgment. The purpose of this approach is to avoid, where possible, the delay and expense of an assessment of compensation.

The sum would be calculated on the basis of the sale price of the articles involved, and would be close to a typical gross profit margin to avoid excessive risk to dealing in copyright material. The amount of damages will be reduced if the defendant cooperates in giving the source of the goods.

GT p.68

Indirect infringers will be liable for actual damages when the plaintiff can show that a reasonably knowledgeable person in the trade would have suspected that the goods in question were made or otherwise obtained in violation of the rights of a copyright owner or those claiming on the owner's behalf.

GT pp.68-69

In indirect infringement proceedings not involving trade in infringing articles, a copyright owner will be entitled to compensation determined by calculating what a willing buyer would pay a willing copyright owner for use of the copyright material. This compensation is a reasonable royalty and a form of statutory damage or compensation.

GT p. 69

7. Injunctions

1984

That courts will also retain the authority to grant injunctions. The injunctive power is very broad and elastic. Injunctions can be mandatory or prohibitive in nature; they can be granted on very short notice, and used to prevent infringements that otherwise appear to be imminent.

GT p.69

1977

That the possibility of a broad injunction covering many works or classes of works not specifically recognized in the new Act.

That the court have the discretion to order the suspension of any manufacture or public performance, in progress or announced, which constitutes an infringement or an act which the court considers manifestly preparatory to infringement.

CC p.194

8. Sound Recordings

1977

That any new Act provide specific remedies to ensure compliance with formalities.

That, for the purposes of remedies, the formalities of the compulsory licence be considered conditions of that licence.

That, where the conditions (including the formalities) of the licence are met by the manufacturer, but where he does not pay royalties in accordance with the regulations, the owner of the infringed copyright be permitted to obtain such payment against the manufacturer's bond, whose licence then becomes suspended with respect to further manufacturing and distribution of the infringed work.

That the regulations specify that all other copyright owners whose works are being mechanically reproduced by the infringing manufacturer may request suspension of operating licences in respect of their own works, if the manufacturer does not maintain the full value of his bond.

CC p.105

9. Statutory Damages

38.1 (1) Statutory damages

Subject to this section, a copyright owner may elect, at any time before final judgment is rendered, to recover, instead of damages and profits referred to in subsection 35(1), an award of statutory damages for all infringements involved in the action, with respect to any one work or other subject-matter, for which any one infringer is liable individually, or for which

any two or more infringers are liable jointly and severally, a sum of not less than \$500 or more than \$20,000 as the court considers just.

38.1 (2) Where defendant unaware of infringement

Where a copyright owner has made an election under subsection (1) and the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright, the court may reduce the amount of the award to less than \$500, but not less than \$200.

38.1 (3) Special case

Where

(a) there is more than one work or other subject-matter in a single medium, and

(b) the awarding of even the minimum amount referred to in subsection (1) or (2) would result in a total award that, in the court's opinion, is grossly out of proportion to the infringement, the court may award, with respect to each work or other subject-matter, such lower amount than \$500 or \$200, as the case may be, as the court considers just.

38.1 (4) Collective societies

Where the defendant has not paid applicable royalties fixed pursuant to this Act, or has not complied with terms and conditions related to those royalties, a collective society may elect to recover, in lieu of any other remedy of a monetary nature provided by this Act, an award of statutory damages in a sum of not less than three and not more than ten times the amount of the applicable royalties, as the court considers just.

38.1 (5) Factors to consider

In exercising its discretion under subsections (1) to (4), the court shall consider all relevant factors, including

(a) the good faith or bad faith of the defendant;

(b) the conduct of the parties before and during the proceedings; and

(c) the need to deter other infringements of the copyright in question.

38.1 (6) No award

No statutory damages may be awarded against

(a) an educational institution that has committed an act referred to in section 29.6 or 29.7 and has not paid any royalties or complied with any terms and conditions fixed under this Act in relation to the commission of the act;

(b) an educational institution that is sued in the circumstances referred to in section 38.2; or

(c) a person who infringes copyright under paragraph 27(2)(e) or section 27.1, where the copy in question was made with the consent of the copyright owner in the country where the copy was made.

(7) Exemplary or punitive damages not affected

An election under subsection (1) does not affect the right that the copyright owner may have to exemplary or punitive damages.

Bill C-32 1996, s. 20(1)

38.2 (1) Maximum amount that may be recovered

An educational institution that has an agreement with a collective society with respect to reprography, is liable to pay to a copyright owner with respect to the reprographic reproduction of a work for which the owner has not authorized the collective society to authorize the reprographic reproduction, not more than the amount of the royalty that would have been payable to that collective society for copying of that nature and extent had the collective society been so authorized.

38.2 (2) Agreements with more than one collective society

Where an educational institution referred to in subsection (1) has more than one such agreement, the amount that the copyright owner may recover is limited to the greatest of any amount of royalties that is or that would have been payable to those collective societies under any of those agreements.

38.2 (3) Application

Subsections (1) and (2) apply only where

(a) the collective society is entitled to authorize the reprographic reproduction of that category of work; and

(b) copying of that general nature and extent is covered by the agreement.

Bill C-32 1996, s. 20(1)

10. Wide Injunction

1996

39.1 (1) Wide injunction

When granting an injunction in respect of an infringement of copyright in a work or other subject-matter, the court may further enjoin the defendant from infringing the copyright in any other work or subject-matter, if

(a) the plaintiff is the owner of the copyright or the person to whom an interest in the copyright has been granted by licence; and

(b) the plaintiff satisfies the court that the defendant will likely infringe the copyright in those other works or subject-matter unless enjoined by the court from doing so.

39.1 (2) Application of injunction

An injunction granted under subsection (1) may extend to works or other subject-matter

(a) in respect of which the plaintiff was not, at the time the proceedings were commenced, the owner of the copyright or the person to whom an interest in the copyright has been granted by licence; or

(b) that did not exist at the time the proceedings were commenced.

Bill C-32 1996, s. 20(1)

SUMMARY REMEDIES

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

1996

The heading before section 42 of the
Act is replaced by the following:

CRIMINAL REMEDIES

Bill C-32 1996, s. 23

42. (1) [Offenses generally] ¹ Offences and punishment

Every person who knowingly

(a) makes for sale or hire any infringing copy of a work in which copyright subsists,

(b) sells or lets for hire or by way of trade exposes or offers for sale or hire any infringing copy of [any such,] ¹ a work in which copyright subsists,

(c) distributes infringing copies of any [such work either] ¹ work in which copyright subsists either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,

(d) by way of trade exhibits in public any infringing copy of any [such work, or] ¹ work in which copyright subsists, or

(e) imports for sale or hire into Canada any infringing copy of any [such] ¹ work in which copyright subsists

is guilty of an offense and liable

(f) on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

Bill C-60 1987, s. 10 ¹;
S.C. 1988, c. 15, s. 10 ¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 10

1921-1985

42. (1) (Summary Remedies) ¹ ^{II} ^{III} Offences

[If any person knowingly] ¹ ^{II} Where any person knowingly

(a) makes for sale or hire any infringing copy of a work in which copyright subsists, [; or] ¹ ^{II}

(b) sells or lets for hire or by way of trade exposes or offers for sale or hire any infringing copy [of any such work; and] ¹ ^{II} ^{III} ^{IV} of a work in which copyright subsists, [; or] ¹ ^{II}

(c) distributes infringing copies of any [such work either for] ¹ ^{II} ^{III} ^{IV} work in which copyright subsists either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,

(d) by way of trade exhibits in public any infringing copy [of any such work, or] ¹ ^{II} ^{III} ^{IV} of any work in which copyright subsists, or

(e) imports for sale or hire into Canada any infringing copy [of any such work, and] ¹ ^{II} ^{III} ^{IV} of any work in which copyright subsists,

[Penalties] * ¹ ^{II} ^{III}

[he shall be guilty of an offence under this Act and be liable on] ¹ ^{II} [he is guilty of an offence under this Act and is liable on] ^{III} ^{IV} that person is guilty of an offence and liable on summary conviction to a fine not exceeding ten dollars for every copy dealt with in contravention of this section, but not exceeding two hundred dollars in respect of the same transaction [; or, in the case of] ¹ ^{II} ^{III} ^{IV} and, in the case of a second or subsequent offence, either to [such fine or] ¹ ^{II} ^{III} ^{IV} that fine or to imprisonment with or without hard labour for a term not exceeding two months.

S.C. 1921, c. 24, s. 24(1) ¹ *;

R.S. 1927, c. C-32, s. 25(1) ^{II} *;

R.S. 1952, c. C-55, s. 25(1) ^{III} *;

R.S. 1970, c. C-30, s. 25(1) ^{IV};

R.S. 1985, c. C-42, s. 42(1)

* margin heading with no new paragraph

1996

Paragraphs 42(1)(a) to (e) of the Act are replaced by the following:

(a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,

(b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,

(c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,

(d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or

(e) imports for sale or rental into Canada any infringing copy of a work or

other subject-matter in which copyright subsists.

Bill C-32 1996, s. 24(1)

1986

The government agrees with the recommendation in principle.

GRCRC 134, p.18

The offenses and penalties mentioned in recommendation 136 may be structured so as to treat minor infringements differently from major ones.

GRCRC 136, p.18

1985

A system of statutory damages should be introduced.

CRC 134, p.98

The criminal offenses under the existing Act should be retained and the monetary penalties increased to one million dollars.

CRC 136, p.98

1984

An indictable offense punishable by a fine, a jail sentence, or both, will be created to deal with serious commercial infringements that include the following ingredients:

- deliberate perpetration;
- commission for commercial benefit or by way of trade;
- production, distribution, rental or sale of goods;
- without colour of right;
- either a potential or actual benefit to the perpetrator exceeding \$5,000 or commission of the act knowing that it may prejudicially affect in a serious way any person's copyright.

The maximum for such offenses will be from two to five years imprisonment in addition to or in lieu of the fine... the penalties will adequately reflect today's economic circumstances. The maximum penalty for these offenses will be a multiple value of the gross sales, the rental income or that remaining inventory of infringing material, or a combination of these. The maximum fine for performances will be a multiple of the proceeds of any sale of tickets for the performance. If the value cannot be estimated, the maximum fine will be \$25,000

GT p.71

1977

That no summary remedies be provided in any new Act.

CC p.187

That no statutory damages be provided in any new Act.

CC p.194

42. (2) [Possession and performance offenses] ^I Possession and performance offenses and punishment

Every person who knowingly

(a) makes or possesses any plate for the purpose of making infringing copies of any work in which copyright subsists, or

(b) for private profit causes [any such work to be performed in public, without the consent of the owner of the copyright ^{and of (b)] ^I to be performed in public, without the consent of the owner of the copyright, any work in which copyright subsists}

is guilty of an offense and liable

(c) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(d) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

Bill C-60 1987, s. 10 ^I;

S.C. 1988, c. 15, s. 10 ^I;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 10

1921-1985

42. (2) Possession of plates for infringement

[If any] ^I ^{II} Where any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes [any such work] ^I ^{II} ^{III} ^{IV} the work to be performed in public without the consent of the owner of the copyright, [Penalties* he shall be guilty of an offence under this Act, and be liable on] ^I ^{II} [Penalties* he is guilty of an offence under this Act, and is liable on] ^{III} ^{IV} that person is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars [, or in] ^I ^{II} ^{III} ^{IV} and, in the case of a second or subsequent offence, either to [such fine or] ^I ^{II} ^{III} ^{IV} that fine or to imprisonment with or without hard labour for a term not exceeding two months.

S.C. 1921, c. 24, s. 24(2) * ^I;

R.S. 1927, c. C-32, s. 25(2) * ^{II};

R.S. 1952, c. C-55, s. 25(2) * ^{III};

R.S. 1970, c. C-30, s. 25(2) ^{IV};

R.S. 1985, c. C-42, s. 42(2)

* Margin heading with no new paragraph

1996

Paragraphs 42(2)(a) and (b) of the Act are replaced by the following:

(a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or

(b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or

other subject-matter in which copyright subsists.

Bill C-32 1996, s. 24(2)

42. (3) Power of court to deal with copies or plates

The court before which any [such proceedings are taken may,] ^{i ii iii iv} proceedings under this section are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender [which appear] ^{i ii} that appear to it to be infringing copies or plates for the purpose of making infringing copies be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

S.C. 1921, c. 24, s. 24(3) ⁱ;
R.S. 1927, c. C-32, s. 25(3) ⁱⁱ;
R.S. 1952, c. C-55, s. 25(3) ⁱⁱⁱ;
R.S. 1970, c. C-30, s. 25(3) ^{iv};
R.S. 1985, c. C-42, s. 42

1996

Subsection 42(3) of the Act is replaced by the following:

42. (3) Power of court to deal with copies or plates

The court before which any proceedings under this section are taken may, whether the alleged offender is convicted or not, order that all copies of the work or other subject-matter or all plates in the possession of the alleged offender that appear to it to be infringing copies, or plates specifically designed or adapted for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

42. (4) Limitation period

Proceedings by summary conviction in respect of an offense under this section may be instituted at any time within, but not later than, two years after the time when the offense was committed.

Bill C-32 1996, s. 24(3)

43. (1) Infringement in case of dramatic, operatic or musical work

Any person who, without the written consent of the owner of the copyright [or of his legal representative, knowingly] ^{i ii iii iv} or of the legal representative of the owner, knowingly performs or causes to be performed in public and for private profit the whole or any part, constituting an infringement,

of any dramatic or operatic work or musical composition in which copyright subsists in Canada [shall be guilty of an offense, and shall be liable on] ^{i ii} is guilty of an offense and [is] ^{iii iv} liable on summary conviction to a fine not exceeding two hundred and fifty dollars [, or in] ^{i ii iii iv} and, in the case of a second or subsequent offense, either [to such fine or] ^{i ii iii iv} to that fine or to imprisonment for a term not exceeding two months or to both.

S.C. 1921, c. 24, s. 25(1) ⁱ;
R.S. 1927, c. C-32, s. 26(1) ⁱⁱ;
R.S. 1952, c. C-55, s. 26(1) ⁱⁱⁱ;
R.S. 1970, c. C-30, s. 26(1) ^{iv};
R.S. 1985, c. C-42, s. 43(1)

1984

The penalties will adequately reflect today's economic circumstances. The maximum fine for performances will be a multiple of the proceeds of any sale of tickets for the performance. If the value cannot be estimated, the maximum fine will be \$25,000.

GT p.71

43. (2) Change or suppression of title or author's name

Any person who makes or causes to be made any change in or suppression of the title, or the name of the author, of any dramatic or operatic work or musical composition in which copyright subsists in Canada, or who makes or causes to be made any change in [such work or] ^{i ii iii iv} the work or composition itself without the written consent of the author or of his legal representative, in order [that the same may be] ^{i ii iii} that [such work or] ^{iv} the work or composition may be performed in whole or in part in public for private profit, [shall be guilty of an offense and shall be liable on] ^{i ii} is guilty of an offense and [is] ^{iii iv} liable on summary conviction to a fine not exceeding five hundred dollars [or in] ^{i ii iii iv} and, in the case of a second or subsequent offense, either to [such fine or] ^{i ii iii iv} that fine or to imprisonment for a term not exceeding four months, or to both.

S.C. 1921, c. 24, s. 25(2) ⁱ;
R.S. 1927, c. C-32, s. 26(2) ⁱⁱ;
R.S. 1952, c. C-55, s. 26(2) ⁱⁱⁱ;
R.S. 1970, c. C-30, s. 26(2) ^{iv};
R.S. 1985, c. C-42, s. 43(2)

1977

That any person who distributes a protected work without indicating the name of the author be obliged where possible to disclose the identity of the author by a suitable means related to the use of the work (e.g. broadcasting, insertions of errata, or communications in the media).

CC p.195

43.1 (1) Offenses and punishments

Every person who knowingly

(a) make for sale or hire any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists,

(b) sells or lets for hire or by way of trade exposes or offers for sale or hire any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists,

(c) distributes infringing fixations, or infringing reproductions thereof, of a performer's performance in respect of which a performer's right subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the performer's right,

(d) by way of trade exhibits in public any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists, or

(e) imports for sale or hire into Canada any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists is guilty of an offense and liable

(f) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding five years or both, or

(g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or both.

R.S. 1994, c. 47, s. 64

1996

Section 43.1 of the Act is repealed.

Bill C-32 1996, s. 25

43.1 (2) Making or possessing plate - offense and punishment

Every person who knowingly makes or possesses any plate for the purpose of making infringing reproductions of a fixation of a performer's performance in respect of which a performer's right subsists is guilty of an offence and liable

(a) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both; or

(b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

R.S. 1994, c. 47, s. 64

1996

Section 43.1 of the Act is repealed.

Bill C-32 1996, s. 25

43.1 (3) Power of court to deal with fixations, reproductions or plates

The court before which any proceedings under this section are taken may, whether the alleged offender is convicted or not, order that

(a) all fixations in the possession of the alleged offender that appear to it to be infringing fixations,

(b) all reproductions of the fixation in the possession of the alleged offender that appear to it to be infringing reproductions, and

(c) all plates in the possession of the alleged offender that appear to it to be plates for the purpose of making infringing reproductions

be destroyed or delivered up to the owner of the performer's right or otherwise dealt with as the court may think fit.

R.S. 1994, c. 47, s. 64

1996

Section 43.1 of the Act is repealed.

Bill C-32 1996, s. 25

SUMMARY REMEDY NOT ADOPTED

1. Computer Machine-Readable Programs

1984

It will be an offense (punishable by fine) to intentionally remove, alter, or obscure a computer program copyright notice, required by the Act, or to add an inaccurate computer program copyright notice for purposes of commercial profit or private financial gain.

GT p.84

2. Sound Recordings

1984

In view of the problems identified it has been decided that unauthorized recording of performances for commercial gain or the use of such unauthorized recordings for that purpose will be made an offense

GT p.12

IMPORTATION OF COPIES, FIXATIONS AND REPRODUCTIONS

S.C. 1994, c. 47, s. 65

[IMPORTATION OF COPIES]

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

1996

The heading before section 44 of the Act is replaced by the following:

IMPORTATION

Bill C-32 1996, s. 26

44. Importation of certain copyright works prohibited

Copies made out of Canada of any work in which copyright subsists [which if] ⁱ ⁱⁱ ⁱⁱⁱ that if made in Canada would infringe copyright and [respecting which] ^{vi} [as to which] ⁱ ⁱⁱ ⁱⁱⁱ ^{iv} ^v ^{vi} ^{vii} the owner of the copyright gives notice in writing to the [Department of Customs] ⁱ [Department of Customs and Excise] ⁱⁱ Department of National Revenue [that he is desirous that such copies should not be so] ⁱ ⁱⁱ ⁱⁱⁱ ^{iv} ^v ^{vi} that [he desires that] ^{vi} the owner desires that the copies not be so imported into Canada, shall not be so imported, and shall be deemed to be included in [Schedule C to the *Customs Tariff*, 1907 and] ⁱ ⁱⁱ [Schedule C] ⁱⁱⁱ ^{iv} ^v [Schedule IV] ^{vi} Schedule VII to the *Customs Tariff*, and that Schedule applies accordingly.

S.C. 1921, c. 24, s. 26 ⁱ;
S.C. 1923, c. 10, s. 3 ⁱⁱ;
R.S. 1927, c. C-32, s. 27 ⁱⁱⁱ;
R.S. 1952, c. C-55, s. 27 ^{iv};
R.S. 1970, c. C-30, s. 27 ^v;
R.S., 1985, c. C-42, s. 44 ^{vi};
S.C. 1987, c. 49, s. 118 ^{vii};
R.S. 1985 (1987), c. 41 (3rd Supp.), s. 116 ^{viii}

44.1 (1) Definitions

In this section

"court"

means the Federal Court or the superior court of a province;

"duties"

has the same meaning as in the *Customs Act*;

"Minister"

means the Minister of National Revenue;

"release"

has the same meaning as in the *Customs Act*.

R.S. 1993, c. 44, s. 66

1996

27. (1) The portion of subsection 44.1(1) of the Act before the definition "court" is replaced by the following:

44.1 (1) Definitions

In this section and sections 44.2 and 44.3.

Bill C-32 1996, s. 27(1)

44.1 (2) Power of court

Where a court is satisfied, on application by an owner, or the exclusive licensee, of copyright in Canada in a work (in this section referred to as the "applicant"), that

(a) the work is about to be imported into Canada, or has been imported into Canada but has not yet been released,

(b) either

(i) in the jurisdiction where the work was made, it was made without the consent of the person who then owned the copyright in that jurisdiction, or

(ii) the work was made elsewhere than in Her Majesty's Realms and Territories or a

foreign country to which the Act applies, and

(c) the work, to the knowledge of the importer, would have infringed copyright if it had been made in Canada by the importer,

the court may make an order described in subsection (3).

R.S. 1993, c. 44, s. 66

1996

Subsection 44.1(2) of the Act is replaced by the following:

44.1 (2) Power of court

A court may make an order described in subsection (3) where the court is satisfied that:

(a) copies of the work are about to be imported into Canada, or have been imported into Canada but have not yet been released;

(b) either:

i - copies of the work were made without the consent of the person who then owned the copyright in the country where the copies were made, or

ii - the copies were made elsewhere than in a country to which this Act extends; and

(c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

44.1 (2.1) Who may apply

A court may make an order described in subsection (3) on application by the owner or exclusive licensee of copyright in a work in Canada.

Bill C-32 1996, s. 27(2)

44.1 (3) Order of court

The order referred to in subsection (2) is an order

(a) directing the Minister

(i) to take reasonable measures, on the basis of information reasonably required by the Minister and provided by the applicant, to detain the work, and

(ii) to notify the applicant and the importer, forthwith after detaining the work, of the detention and the reasons therefor; and

(b) providing for such other matters as the court considers appropriate.

S.C. 1993, c. 44, s. 66

44.1 (4) How application made

An application referred to in subsection (2) may be made in an action or otherwise, and either on notice or *ex parte*, except that it must always be made on notice to the Minister.

S.C. 1993, c. 44, s. 66

1996

27.(3) Subsection 44.1(4) of the English version of the Act is replaced by the following:

44.1(4) How application made

An application for an order made under subsection (2) may be made in an action or otherwise, and either on notice or *ex parte*, except that it must always be made on notice to the Minister.

Bill C-32 1996, s. 27(3)

44.1 (5) Court may require security

Before making an order under subsection (2), the court may require the applicant to furnish security, in an amount fixed by the court,

(a) to cover duties, storage and handling charges, and any other amount that may become chargeable against the work; and

(b) to answer any damages that may by reason of the order to be incurred by the owner, importer or consignee of the work.

S.C. 1993, c. 44, s. 66

44.1 (6) Application for directions

The Minister may apply to the court for directions in implementing an order made under subsection (2).

S.C. 1993, c. 44, s. 66

44.1 (7) Minister may allow inspection

The Minister may give the applicant or the importer an opportunity to inspect the detained work for the purpose of substantiating or refuting, as the case may be, the applicant's claim.

S.C. 1993, c. 44, s. 66

44.1 (8) Where applicant fails to commence an action

Unless an order made under subsection (2) provides otherwise, the Minister shall, subject to the *Customs Act* and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release the work without further notice to the applicant if, two weeks after the applicant has been notified under subparagraph (3)(a)(ii), the applicant has not notified the Minister that the applicant has commenced an action for the final determination by the court of the issues referred to in paragraphs (2)(b) and (c).

S.C. 1993, c. 44, s. 66

1996

27.(4) Subsections 44.1(8) and (9) of the Act are replaced by the following:

44.(8) Where applicant fails to commence an action

Unless an order made under subsection (2) provides otherwise, the Minister shall, subject to the *Customs Act* and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release the copies of the work without further notice to the applicant if, two weeks after the applicant has been notified under subparagraph (3)(a)(ii), the applicant has not notified the Minister that the applicant has commenced a proceeding for a final determination by the court of the issues referred to in paragraphs (2)(b) and (c).

Bill C-32 1996, s. 27(4)

44.1 (9) Where court finds in plaintiff's favour

Where, in an action commenced under this section, the court finds that the circumstances referred to in paragraphs (2)(b) and (c) existed, the court may make any order that it considers appropriate in the circumstances, including an order that the work be destroyed, or that it be delivered up to the plaintiff as the plaintiff's property absolutely.

S.C. 1993, c. 44, s. 66

1996

27.(4) Subsections 44.1(8) and (9) of the Act are replaced by the following:

44.(9) Where court finds in plaintiff's favour

Where, in a proceeding commenced under this section the court finds that the circumstances referred to in paragraphs (2)(b) and (c) existed, the court may make any order that it considers appropriate in the circumstances, including an order that the copies of the work be destroyed, or that they be delivered up to the plaintiff as the plaintiff's property absolutely.

Bill C-32, 1996 s. 27(4)

44.1 (10) Other remedies not affected

For greater certainty, nothing in this section affects any remedy available under any other provision of the Act or any other Act of Parliament.

S.C. 1993, c. 44, s. 66

1986

The government agrees with the recommendation in principle. The protection mechanism mentioned in recommendation 135, however, will be developed at a later stage.

GRCRC 135, p.18

1985

The protection afforded by Schedule C of the *Customs Tariff* should be retained.

CRC 135, p.98

1984

Books, records, the musical works contained in the records and cinematographic works will be granted import protection under the new *Copyright Act*.

The Governor in Council will be given the necessary power to add, from time to time, by regulation other types of cultural works to the list of those protected.

The onus for pursuing infringers in this instance should properly lie with the copyright owner... For these reasons section 27 will be repealed.

GT p.25

1977

That sections 27 and 28 be repealed.

CC p.203

44.2 Performer's performances

Section 44.1 applies, with such modifications as the circumstances require, in respect of a performer's performance, where a fixation of the performer's performance, or a reproduction of such a fixation,

(a) is about to be imported into Canada, or has been imported into Canada but has not yet been released;

(b) was made without the consent of the performer; and

(c) to the knowledge of the importer, would have infringed the

performer's right if it had been made in Canada by the importer.

S.C. 1994, c. 47, s. 66

1996

28. Sections 44.2 and 45 of the Act are replaced by the following:

44.2 (1) Importation of books

A court may, subject to this section, make an order described in subsection 44.1(3) in relation to a book where the court is satisfied that

(a) copies of the book are about to be imported into Canada, or have been imported but have not yet been released;

(b) copies of the book were made with the consent of the owner of the copyright in the book in the country where the copies were made, but were imported without the consent of the owner in Canada of the copyright in the book; and

(c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

44.2 (2) Who may apply

A court may make an order described in subsection 44.1(3) in relation to a book on application by

(a) the owner of the copyright in the book in Canada;

(b) the exclusive licensee of the copyright in the book in Canada; or

(c) the exclusive distributor of the book.

44.2 (3) Limitation

Subsections (1) and (2) only apply where there is an exclusive distributor of the book and the acts described in those subsections take place in the part of Canada or in respect of the particular sector of the market for which the person is the exclusive distributor.

44.2 (4) Application of certain provisions

Subsections 44.1(3) to (10) apply, with such modifications as the circumstances require, in respect of an order made under subsection (1).

44.3 Limitation

No exclusive licensee of the copyright in a book in Canada, and no exclusive distributor of a book, may obtain an order under section 44.2 against another exclusive licensee of the copyright in that book in Canada or against another exclusive distributor of that book.

44.4 Importation of other subject-matter

Section 44.1 applies, with such modifications as the circumstances require, in respect of a sound recording, performer's performance or communication signal, where a fixation or a reproduction of a fixation of it

(a) is about to be imported into Canada or has been imported but have not yet been released;

(b) either

i - was made without the consent of the person who then owned the copyright in the sound recording, performer's performance or communication signal, as the case may be, in the country where the fixation or reproduction was made, or

ii - was made elsewhere than in a country to which Part II extends; and

(c) would infringe the right of the owner of copyright in the sound recording, performer's performance or communication signal if it was made in Canada by the importer and the importer knows or should have known this.

Bill C-32 1996, s. 28

45. (1) No importation where right to reproduce in Canada granted

Where the owner of the copyright has by licence or otherwise granted the right to reproduce any book in Canada, it shall not be lawful except as provided in subsections (3) and (4) to import into Canada copies of the book, and the copies shall be deemed to be included in Schedule VII to the *Customs Tariff*, and that Schedule applies accordingly.

S.C. 1994, c. 47, s. 67

1921-1994

45. (1) No importation where right or licence to reproduce in Canada granted

Where the owner of the copyright has by licence or otherwise granted the right to reproduce any book in Canada, or where a licence to reproduce [such book] ^{I II III IV VI} the book has been granted under [sections twelve or thirteen] ^I [the provisions of this Act] ^{II III} this Act, it shall not be lawful except as provided in [subsection three] ^{I II} [subsection (3)] ^{III IV VI} subsections (3) and (4) to import into Canada copies of [such book] ^{I II III IV VI} the book, and [such copies] ^{I II III IV VI} the copies shall be deemed to be included in [Schedule C to The *Customs Tariff*, 1907.] ^I [Schedule C] ^{II III IV} [Schedule IV] ^V Schedule VII to the *Customs Tariff*, and that Schedule [shall apply accordingly.] ^{I II III} applies accordingly.

S.C. 1921, c. 24, s. 27(1) ^I;

R.S. 1927, c. C-32, s. 28(1) ^{II};

R.S. 1952, c. C-55, s. 28(1) ^{III};

R.S. 1970, c. C-30, s. 28(1) ^{IV};

R.S. 1985, c. C-42, s. 45(1) ^V;

S.C. 1987, c. 49, s. 119 ^{VI};

R.S. 1985 (1987), c. 41 (3rd Supp.), s. 117

1996

28. Section(s) 45... of the Act are replaced by the following:

45 (1) Exceptions

Notwithstanding anything in this Act, it is lawful for a person

(a) to import for their own use not more than two copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;

(b) to import for use by a department of the Government of Canada or a province copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;

(c) at any time before copies of a work or other subject-matter are made in Canada, to import any copies, except copies of a book, made with the consent of the owner of the copyright in the country where the copies were made, that are required for the use of a library, archive, museum or educational institution;

(d) to import, for the use of a library, archive, museum or educational institution, not more than one copy of a book that is made with the consent of the owner of the copyright in the country where the book was made; and

(e) to import copies, made with the consent of the owner of the copyright in the country where they were made, of any used books.

45.(2) Satisfactory evidence

An officer of customs may, in the officer's discretion, require a person seeking to import a copy of a work or other subject-matter under this section to produce satisfactory evidence of the facts necessary to establish the person's right to import the copy.

Bill C-32 1996, s. 28

1986

The government agrees with the recommendation in principle. The protection mechanism mentioned in recommendation 135, however, will be developed at a later stage.

GRCRC 135, p.18

1985

The protection afforded by Schedule C of the *Customs Tariff* should be retained.

CRC 135, p.98

1984

Subsection 28(3)(a), (b) and (c), which allow importation of copies of works... will be retained. The remainder of section 28 will be repealed.

GT p.25

1977

That sections 27 and 28 be repealed.

CC p.203

45. (2) Notice required of intention to import

Except as provided [in subsection three,] ^{I II} [in subsection (3),] ^{III IV VI} in subsections (3) and (4), it shall be unlawful to import into Canada copies of

any book in which copyright subsists until fourteen days after publication thereof and during [such period or] ^{I II III IV VI} that period or any extension thereof [such copies] ^{I II III IV VI} the copies shall be deemed to be included in [Schedule C to the *Customs Tariff*, 1907,] ^I [Schedule C] ^{II III IV} [Schedule IV] ^V Schedule VII to the *Customs Tariff*, and that Schedule [shall apply accordingly;] ^{I II III} applies accordingly, [Minister may extend time] * ^{III}

but if within [the said period] ^{III} that period of fourteen days an application for a licence has been made in accordance with the provisions of this Act relating thereto, the Minister may in [his discretion extend] ^{III IV V VI} the Minister's discretion extend [the said period] ^{III} the period and shall forthwith notify the Department of National Revenue [of such extension] ^{III IV VI} of the extension; and the prohibition against importation shall be continued accordingly.

S.C. 1921, c. 24, s. 27(2) ^I;
R.S. 1927, c. C-32, s. 28(2) ^{II *};
R.S. 1952, c. C-55, s. 28(2) ^{III *};
R.S. 1970, c. C-30, s. 28(2) ^{IV};
R.S. 1985, c. C-42, s. 45(2) ^V;
S.C. 1987, c. 49, s. 119 ^{VI};

R.S. 1985 (1987), c. 41(3rd Supp.), s. 117

* margin heading with no new paragraph

1921-1952

Minister may extend time ^{II *}

; Provided that if within the said period of fourteen days an application for a licence has been made in accordance with the provisions of [section thirteen,] ^I this Act the Minister may in his discretion extend the said period [and the prohibition against importation shall continue accordingly. The Minister shall] forthwith ^I and shall forthwith notify the Department of [Customs of such extension.] ^I National Revenue of such extension; and the prohibition against importation shall be continued accordingly.

S.C. 1921, c. 24, s. 27(2) ^I;
R.S. 1927, c. C-32, s. 28(2) ^{II *}

* margin heading with no new paragraph

45. (3) Exceptions

Notwithstanding anything in this Act, it shall be lawful for any person

(a) to import [for his own use] ^{I II III IV} ^{V VI} for the person's own use not more

than two copies of any work published in [any country adhering to the Convention;] ^{I II III} ^{IV} [any country that has adhered to the Convention and the additional Protocol thereto set out in Schedule II;] ^V [a Berne Convention country;] ^{VI} a treaty country;

(b) to import for use by any department of [His Majesty's Government for the Dominion or any of the provinces of Canada, copies of] ^{I II} [Her Majesty's Government for Canada or any of the provinces of Canada, copies of] ^{III} the Government of Canada or any province copies of any work, wherever published;

(c) at any time before a work is printed or made in Canada to import copies required for the use of any public library or institution of learning; [and] ^V ^{VI VI}

S.C. 1921, c. 24, s. 27(3) ^I ;
R.S. 1927, c. C-32, s. 28(3) ^{II} ;
R.S. 1952, c. C-55, s. 28(3) ^{III} ;
R.S. 1970, c. C-30, s. 28(3) ^{IV} ;
R.S. 1985, c. C-42, s. 45(3) ^V ;
S.C. 1993, c. 44, s. 67(1) ^{VI} ;
S.C. 1994, c. 47, s. 67(2)

(d) to import any book lawfully printed in [the United Kingdom or in a Berne Convention country and] ^I a treaty country and published for circulation among, and sale to, the public within that country.

S.C. 1993, c. 44, s. 67(1) ^I ;
S.C. 1994, c. 47, s. 67(2)

1921-1993

(d) to import any book lawfully printed in [the United Kingdom or] ^I Great Britain or in a foreign country [which has] ^{I II} that has adhered to the Convention and the Additional Protocol thereto set out in [the second Schedule to this Act and] ^{I II} [the Second Schedule] ^{III} Schedule II and published for circulation among, and sale to, the public [within either: provided that any...] ^{I II} [within either; but any ...] ^{III IV} within either country.

S.C. 1921, c. 24, s. 27(3)(d) ^I ;
R.S. 1927, c. C-32, s. 28(3)(d) ^{II} ;
R.S. 1952, c. C-55, s. 28(3)(d) ^{III} ;
R.S. 1970, c. C-30, s. 28(3)(d) ^{IV} ;
R.S. 1985, c. C-42, s. 45(4)

1984

Subsection 28(3)(a), (b) and (c), which allow importation of copies of works... will be retained. The remainder of section 28 will be repealed.

GT p.25

An exception (to strict liability) would be the case where authorized copies are imported. As opposed to a situation where the copies were illegally made in a foreign country, the importer

would not have the right to claim compensation against a foreign party in its jurisdiction. Therefore, equity demands that importers of authorized copies not be liable unless they know the goods infringe in Canada. Finally, to avoid interfering too much in trade of copyright articles under a system of strict liability, immunity will apply to persons who innocently acquire articles for their own use.

GT p.68

45. (4) Satisfactory evidence

[;provided that any] ^{I II} [; but any] ^{III} Any officer of [the Customs] ^{I II III} customs may, in his discretion, require any person seeking to import any work under this section to produce satisfactory evidence of the facts necessary to establish his right so to import.

S.C. 1921, c. 24, s. 27(3)(d) ^I ;
R.S. 1927, c. C-32, s. 28(3)(d) ^{II} ;
R.S. 1952, c. C-55, s. 28(3)(d) ^{III} ;
R.S. 1970, c. C-30, s. 28(3)(d);
R.S. 1985, c. C-42, s. 45(4)

45. (5) Application of provisions regarding importation

This section does not apply to any work the author of which is a subject or citizen of a treaty country other than Canada.

R.S., 1994, c. 47, s. 67(4)

1993-1994

45. (5) Application of provisions regarding importation

This section does not apply to any work the author of which is a British subject, other than a Canadian citizen, or the subject or citizen of a Berne Convention country.

S.C. 1993, c. 44, s. 67(3)

1923-1993

45.(5) Application of provisions regarding importation

This section [shall not] ^{I II} does not apply to any work the author of which is a British subject, other than a Canadian citizen, or the subject or citizen of a country [which has] ^{I II} that has adhered to the Convention and the Additional Protocol thereto set out in [the second Schedule to the said Act] ^I [the second Schedule to this Act] ^{II} [the Second Schedule] ^{III} Schedule II.

S.C. 1923, c. 10, s. 2 ^I ;
R.S. 1927, c. C-32, s. 28(4) ^{II} ;
R.S. 1952, c. C-55, s. 28(4) ^{III} ;
R.S. 1970, c. C-30, s. 28(4);
R.S. 1985, c. C-42, s. 45(5)

1984

Subsection 28(3)(a), (b) and (c), which allow importation of copies of works... will be retained. The remainder of section 28 will be repealed.

GT p.25

ADMINISTRATION

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

1996

The heading before section 46 of the Act is replaced by the following:

PART V ADMINISTRATION Copyright Office

Bill C-32 1996, s. 29

46. Copyright office

The Copyright Office shall be attached to the Patent Office.

R.S. 1927, c. C-32, s. 29;
R.S. 1952, c. C-55, s. 29;
R.S. 1970, c. C-30, s. 29;
R.S. 1985, c. C-42, s. 46

1921-1927

28. Copyright office

The Copyright Office, established under the *Copyright Act* and amendments thereto, shall continue and shall be attached to the Patent Office, and any officers appointed under the said Act shall continue as if established or appointed under this Act.

S.C. 1921, c. 24, s. 28

47. Powers of Commissioner and Registrar

The Commissioner of Patents shall exercise the powers conferred and perform the duties imposed [upon him] ¹ on him by this Act under the direction of the Minister, and, [in the absence or inability to act of the Commissioner of Patents, the Registrar of] ¹ in the absence of the Commissioner of Patents or if the Commissioner is unable to act, the Registrar of Copyrights or other officer temporarily appointed by the Minister may, as Acting Commissioner, exercise [such powers] ¹ those powers and perform [such duties] ¹ those duties under the direction of the Minister.

S.C. 1931, c. 8, s. 8 ¹;
R.S. 1952, c. C-55, s. 30 ¹;
R.S. 1970, c. C-30, s. 30 ¹;
R.S. 1985, c. C-42, s. 47

1921-31

29. Powers of Commissioner and Registrar

The Commissioner of Patents may do any act or thing, whether judicial or ministerial, which the Minister is authorized or empowered to do by any provision of this Act, and in the absence or inability to act of the Commissioner of Patents the Registrar of Copyrights may exercise such power and do any act or thing.

S.C. 1921, c. 24, s. 29;
R.S. 1927, c. C-32, s. 30

48. Registrar

There shall be a Registrar of Copyrights.

S.C. 1921, c. 24, s. 30;
R.S. 1927, c. C-32, s. 31;
R.S. 1952, c. C-55, s. 31;
R.S. 1970, c. C-30, s. 31;
R.S. 1985, c. C-42, s. 48

49. Register of Copyrights, certification and certified copies

The Commissioner of Patents, the Registrar of Copyrights or an officer, clerk or employee of the Copyright Office may sign certificates and certified copies of the Register of Copyrights.

S.C. 1993, c. 15, s. 4

1921-1993

49. Duties of Commissioner and Registrar

The Commissioner of Patents or the Registrar of Copyrights shall sign all entries made in [the registers and] ¹ the Register of Copyrights and shall sign all certificates and certified copies [under the seal of the Copyright Office. ^{and}] ¹ thereof.

S.C. 1921, c. 24, s. 31 ¹;
R.S. 1927, c. C-32, s. 32 ¹;
R.S. 1952, c. C-55, s. 32 ¹;
R.S. 1970, c. C-30, s. 31 ¹;
R.S. 1985, c. C-42, s. 49 ¹;
S.C. 1992, c. 1, s. 47

50. Other duties of Registrar

The Registrar of Copyrights shall perform such other duties in connection with the administration of this Act as may be assigned to him by the Commissioner of Patents.

S.C. 1921, c. 24, s. 32;
R.S. 1927, c. C-32, s. 33;
R.S. 1952, c. C-55, s. 33;
R.S. 1970, c. C-30, s. 33;
R.S. 1985, c. C-42, s. 50

51. Repealed [Seal]

S.C. 1992, c. 1, s. 48

1921-1992

51. Seal

There shall be a seal of the Copyright Office and impressions thereof shall be judicially noticed.

S.C. 1921, c. 24, s. 33;
R.S. 1927, c. C-32, s. 34;
R.S. 1952, c. C-55, s. 34;
R.S. 1970, c. C-30, s. 34;
R.S. 1985, c. C-42, s. 51

52. Control of business and officials

The Commissioner of Patents shall, subject to the Minister, oversee and direct the officers, clerks and employees of the Copyright Office, [and have] ^I have general control of the business thereof and shall perform such other duties as are assigned to him by the Governor in Council.

S.C. 1921, c. 24, s. 34 ^I;
R.S. 1927, c. C-32, s. 35 ^I;
R.S. 1952, c. C-55, s. 35 ^I;
R.S. 1970, c. C-30, s. 35 ^I;
R.S. 1985, c. C-42, s. 52

53. (1) Register to be evidence

The Register of Copyrights is evidence of the particulars entered in it, and a copy of an entry in the Register is evidence of the particulars of the entry if it is certified by the Commissioner of Patents, the Registrar of Copyrights or an officer, clerk or employee of the Copyright Office as a true copy.

S.C. 1993, c. 15, s. 5(1)

1992-1993

53. (1) Register to be evidence

The Register of Copyrights under this Act is evidence of the particulars entered therein, and documents purporting to be copies of any entries therein or extracts therefrom, certified by the Commissioner of Patents or the Registrar of Copyrights, are admissible in evidence in all courts without further proof or production of the originals.

S.C. 1992, c. 1, s. 49

1921-1992

53.(1) Register to be evidence

Every register of copyrights under this Act [shall be *prima facie* evidence] ^I is evidence of the particulars entered therein and documents purporting to be copies of any entries therein or extracts therefrom,

certified by the Commissioner of Patents or the Registrar of Copyrights and sealed with the seal of the Copyright Office, shall be admissible in evidence in all courts without further proof or production of the originals.

S.C. 1921, c. 24, s. 35(1) ^I;
R.S. 1927, c. C-32, s. 36(1) ^I;
R.S. 1952, c. C-55, s. 36(1) ^I;
R.S. 1970, c. C-30, s. 36(1);
R.S. 1985, c. C-42, s. 53(1)

53. (2) [no heading] ^I Certificate to be [prima facie evidence] ^{II III} evidence

A certificate of registration of copyright in a work [shall be *prima facie* evidence] ^{I II III} is evidence that copyright subsists in the work and that the person registered is the owner of [such copyright.] ^{I II III IV} the copyright.

S.C. 1921, c. 24, s. 35(2) ^I;
R.S. 1927, c. C-32, s. 36(2) ^{II};
R.S. 1952, c. C-55, s. 36(2) ^{III};
R.S. 1970, c. C-30, s. 36(2) ^{IV};
R.S., 1985, c. C-42, s. 53(2)

1986

30. Subsection 53(2) of the Act is replaced by the following

53((2) Owner of copyright

A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright.

53((2.1) Assignee

A certificate of registration of an assignment of copyright is evidence that the right recorded on the certificate has been assigned and that the assignee registered is the owner of that right.

53((2.2) licensee

A certificate of registration of a licence granting an interest in a copyright is evidence that the interest recorded on the certificate has been granted and that the licensee is the holder of that interest.

Bill C-32 1996, s. 30

1986

The government agrees with the recommendation(s) in principle.

GRCRC 127, p.17

The government agrees with the recommendation(s) in principle.

GRCRC 131, p.17

1985

A voluntary system of copyright registration should be maintained.

CRC 127, p.95

The legal effect of a certificate of registration should be to establish two rebuttable presumptions: that copyright subsists in the work and that the person named as owner on the certificate of registration is the owner of the copyright in the work

CRC 131, p.96

1984

The evidentiary advantages that might be associated with registration could be achieved at no cost, through statutory presumptions favouring the plaintiff, particularly with respect to proof of ownership. The new Act will include presumptions that the work is protected by copyright and that in court proceedings the plaintiff is the owner of the copyright.

GT p.73

The decision has been made to abolish voluntary copyright registration.

GT p.74

1977

That the present voluntary registration system not be retained in any new Act.

CRC p.209

53. (3) Admissibility

A certified copy or certificate appearing to have been issued under this section is admissible in all courts without proof of the signature or official character of the person appearing to have signed it.

S.C. 1993, c. 15, s. 5(2)

REGISTRATION

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

54. (1) [Registers of copyrights] ^{i ii iii iv v} Register of Copyrights

The Minister shall cause to be kept at the Copyright Office, [books to be called the Registers of Copyrights, in which] ^{i ii iii iv v} a register to be called the Register of Copyrights in which may be entered the names or titles of works and the names and addresses of authors and such other particulars as may be prescribed.

S.C. 1921, c. 24, s. 36(1) ⁱ;
R.S. 1927, c. C-32, s. 37(1) ⁱⁱ;
R.S. 1952, c. C-55, s. 37(1) ⁱⁱⁱ;
R.S. 1970, c. C-30, s. 37(1) ^{iv};
R.S. 1985, c. C-42, s. 54(1) ^v;
S.C. 1992, c. 1, s. 50(1)

1986

31.(1) Subsections 54(1) and (2) of the Act are replaced by the following:

54. (1) Register of Copyrights

The Minister shall cause to be kept at the Copyright Office a register called the Register of Copyrights in which may be entered

(a) the names or titles of works and other subject-matter in which copyright subsists;

(b) the names and addresses of authors, performers, makers of sound

recordings, broadcasters, owners of copyrights, assignees of copyrights, and persons to whom an interest in copyright has been granted by licence; and

(c) such other particulars as may be prescribed by regulation.

Bill C-32 1996, s. 31.(1)

1986

The government agrees with the recommendation(s) in principle.

GRCRC 127, p.17

1985

A voluntary system of registration should be maintained.

CRC 127, p.95

54. (2) Entries by author, etc.

The author or publisher of, or the owner of, or other person interested in the copyright in any work may cause the particulars respecting the work to be entered in the register.

S.C. 1921, c. 24, s. 36(2) ;
R.S. 1927, c. C-32, s. 37(2);
R.S. 1952, c. C-55, s. 37(2);
R.S. 1970, c. C-30, s. 37(2);
R.S. 1985, c. C-42, s. 54(2)

54. (3) Single entry sufficient

In the case of an encyclopedia, newspaper, review, magazine or other periodical work, or work published in a series of books or parts, it [shall not be necessary] ^{i ii iii} is not necessary to make a separate entry for each number or part, but a single entry for the whole work [shall suffice.] ^{i ii iii} is sufficient.

S.C. 1921, c. 24, s. 36(3) ⁱ;
R.S. 1927, c. C-32, s. 37(3) ⁱⁱ;
R.S. 1952, c. C-55, s. 37(3) ⁱⁱⁱ;
R.S. 1970, c. C-30, s. 37(3);
R.S. 1985, c. C-42, s. 54(3)

1986

The government agrees with the recommendation(s) in principle.

GRCRC 130 p.17

1985

Requirements for registration of a work consisting of multiple parts should be clarified.

CRC 130, p.95

54. (4) [Indexes] ^{i ii iii} Indices

There shall also be kept at the Copyright Office such [indexes of the registers] ^{i ii iii} indices of the [registers] ^{iv v} Register established under this section as may be prescribed.

S.C. 1921, c. 24, s. 36(4) ⁱ;
R.S. 1927, c. C-32, s. 37(4) ⁱⁱ;
R.S. 1952, c. C-55, s. 37(4) ⁱⁱⁱ;
R.S. 1970, c. C-30, s. 37(4) ^{iv};
R.S. 1985, c. C-42, s. 54(4) ^v;
S.C. 1992, c. 1, s. 50(2)

1996

31(2) Subsections 54(4) and (5) of the Act are replaced by the following:

54((4) Indices

There shall also be kept at the Copyright Office such indices of the Register established under this section as may be prescribed by regulation.

Bill C-32 1996, s. 31.(2)

54. (5) [Form and inspection of registers; extracts may be made] ^{I II III} Inspection and extracts

[The registers and indexes] ^{I II III} [The registers and indices] ^{IV V} The Register and indices established under this section shall be in the prescribed form and shall at all reasonable times be open to inspection, and any person [shall be entitled to take copies of or make extracts from any such register. ^{and}] ^I is entitled to [take] ^{III IV} ^V make copies of or [make] ^{III IV V} take extracts from the Register.

S.C. 1921, c. 24, s. 36(5) ^I;
R.S. 1927, c. C-32, s. 37(5) ^{II};
R.S. 1952, c. C-55, s. 37(5) ^{III};
R.S. 1970, c. C-30, s. 37(5) ^{IV};
R.S. 1985, c. C-42, s. 54(5) ^V;
S.C. 1992, c. 1, s. 50(2)

1996

31(2) Subsections 54(4) and (5) of the Act are replaced by the following:

54(5) Inspection and extracts

The Register and indices established under this section shall at all reasonable times be open to inspection, and any person is entitled to make copies of or take extracts from the Register.

Bill C-32 1996, s. 31.(2)

54. (6) [R.S. 1906, c. 70] ^I Former registration effective

Any registration made under the *Copyright Act*, [shall have the same] ^I [chapter seventy] ^{II} chapter 70 of the *Revised Statutes of Canada* 1906, has the same force and effect as if made under this Act.

S.C. 1921, c. 24, s. 36(6) ^I;
R.S. 1927, c. C-32, s. 37(6) ^{II};
R.S. 1952, c. C-55, s. 37(6);
R.S. 1970, c. C-30, s. 37(6);
R.S. 1985, c. C-42, s. 54(6)

54. (7) Subsisting copyright

Any work in which copyright, operative in Canada, subsisted

immediately before [the commencement of this Act, shall be registerable] ^I [the first day of January, one thousand nine hundred and twenty-four shall be registerable] ^{II} [the 1st day of January, 1924] ^{III IV} **January 1, 1924 is registerable under this Act.**

S.C. 1921, c. 24, s. 36(7) ^I;
R.S. 1927, c. C-32, s. 37(7) ^{II};
R.S. 1952, c. C-55, s. 37(7) ^{III};
R.S. 1970, c. C-30, s. 37(7) ^{IV};
R.S. 1985, c. C-42, s. 54(7)

55. (1) [By whom application for registration may be made] ^{I II III} Who may apply for registration

The application for the registration of a copyright may be made in the name of the author or [of his legal representatives, by] ^{I II III IV} of the legal representatives of the author, by any person purporting to be the agent of [such author or] ^{I II III IV} the author or legal representatives.

S.C. 1921, c. 24, s. 37(1) ^I;
R.S. 1927, c. C-32, s. 38(1) ^{II};
R.S. 1952, c. C-55, s. 38(1) ^{III};
R.S. 1970, c. C-30, s. 38(1) ^{IV};
R.S. 1985, c. C-42, s. 55(1)

1996

33. Sections 55 and 56 of the Act are replaced by the following:

55. (1) Copyright in works

Application for the registration of a copyright in a work may be made by or on behalf of the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted a licence.

55. ((2) Application for registration

An application under subsection (1) must be filed with the Copyright Office, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

(a) the name and address of the owner of the copyright in the work;

(b) a declaration that the applicant is the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;

(c) the category of the work;

(d) the title of the work;

(e) the name of the author and, if the author is dead, the date of the author's death, if known;

- (f) in the case of a published work, the date and place of first publication; and,
(g) any additional information prescribed by regulation.

Bill C-32 1996, s. 32

1986

The government agrees with the recommendation(s) in principle.

GRCRC 128, p.17

1985

In an application for copyright registration, more information, supported by an affidavit, should be provided to the Registrar as to the identification and nature of the work and as to how the applicant derived title.

CRIC 18, p.95

55. (2) Recovery of damages

Any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable in any court of competent jurisdiction.

S.C. 1921, c. 24, s. 37(2);

R.S. 1927, c. C-32, s. 38(2);

R.S. 1952, c. C-55, s. 38(2);

R.S. 1970, c. C-30, s. 38(2);

R.S. 1985, c. C-42, s. 55(2)

56. Form of application

Application for registration of a copyright shall be made in accordance with the prescribed form, and shall be deposited at the Copyright Office together with the prescribed fee [prescribed by or determined under the regulations] ¹.

S.C. 1921, c. 24, s. 38;

R.S. 1927, c. C-32, s. 39;

R.S. 1952, c. C-55, s. 39;

R.S. 1970, c. C-30, s. 39;

R.S. 1985, c. C-42, s. 56;

S.C. 1993, c. 15, s. 6 ¹

1996

32. Sections 55 and 56 of the Act are replaced by the following:

56. (1) Copyright in subject-matter other than works

Application for the registration of a copyright in subject-matter other than a work may be made by or on behalf of the owner of the copyright in the subject-matter, an assignee of the copyright, or a person to whom an interest in the copyright has been granted a licence.

56. (2) Application for registration

An application under subsection (1) must be filed with the Copyright Office, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

(a) the name and address of the owner of the copyright in the subject-matter;

(b) a declaration that the applicant is the owner of the copyright in the subject-matter, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;

(c) whether the subject matter is a performer's performance, a sound recording or a communication signal;

(d) the title, if any, of the subject-matter;

(e) the date of

i - in the case of a performer's performance, its first fixation in a sound recording or, if it is not fixed in a sound recording, its first performance,

ii - in the case of a sound recording, the first fixation, or

iii - in the case of a communication signal, its broadcast; and

(f) any additional information prescribed by regulation.

56.1 Recovery of damages

Where a person purports to have the authority to apply for the registration of a copyright under section 55 or 56 on behalf of another person, any damages caused by a fraudulent or erroneous assumption of such authority is recoverable in any court of competent jurisdiction.

Bill C-32 1996, s. 32

57. (1) Registration of a grant of interest in copyright

Any grant of an interest in a copyright, either by assignment or licence, may be registered in the [Registers] ^{I II III IV} Register of Copyrights at the Copyright Office, [upon production to the Copyright Office of] ^{I II III} on production of the original instrument [and] ^{I II III IV} or a certified copy [thereof and payment of the prescribed fee. and] ^{I II III IV V} of it and on payment of any registration fee prescribed by or determined under the regulations.

S.C. 1931, c. 8, s. 9 ^I;

R.S. 1952, c. C-55, s. 40(1) ^{II};

R.S. 1970, c. C-30, s. 40(1) ^{III};

R.S. 1985, c. C-42, s. 57(1) ^{IV};

S.C. 1992, c. 1, s. 51(1) ^V;

S.C. 1993, c. 15, s. 7(1)

1921-1931

39. (1) Registration of a grant of interest in copyright

Any grant of an interest in a copyright, either by assignment or licence, may be registered, if made in duplicate, upon

production of both duplicates to the Copyright Office and payment of the prescribed fee. [One duplicate shall be retained at the Copyright Office and the other shall be returned to the person depositing it, with a certificate of registration.] ^I

S.C. 1921, c. 24, s. 39(1) ^I;
R.S. 1927, c. C-32, s. 40(1)

1996

33.(1) Subsection 57(1) of the Act is replaced by the following:

57. (1) Registration of assignment or licence

The Registrar of Copyright shall register an assignment of copyright, or a licence granting an interest in a copyright on being furnished with

(a) the original instrument or certified copy of it, or other evidence satisfactory to the Registrar of the assignment or licence; and

(b) the fee prescribed by or determined under the regulations.

Bill C-32 1996, s. 33(1)

57. (2) Repealed

[Certificate of registration]

S.C. 1992, c. 1, s. 51(1)

1931-1992

40.(2) [no heading] ^I ^{II} Certificate of registration

The certified copy shall be retained at the Copyright Office and the original shall be returned to the person depositing it, with a certificate of its registration endorsed thereon or affixed thereto.

S.C. 1931, c. 8, s. 9 ^I;
R.S. 1952, c. C-55, s. 40(2) ^{II};
R.S. 1970, c. C-30, s. 40(2);
R.S. 1985, c. C-42, s. 57(2)

1927-1931

40.(2) [no heading]

One duplicate shall be retained at the Copyright Office and the other shall be returned to the person depositing it, with a certificate of registration.

S.C. 1921, c. 24, s. 39(1);
R.S. 1927, c. C-32, s. 40(2);

57. (3) When grant is void

Any grant of an interest in a copyright, either by assignment or licence, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice, [unless such assignment or license is registered in the manner directed by this Act before the registering of the instrument under which a subsequent assignee or licensee claims, and no grantee shall maintain any action under this Act, unless his and each such prior grant has

been registered. ^{end}] ^I ^{II} unless [such prior] ^{III} ^{IV} ^V the prior assignment or licence is registered in the manner prescribed by this Act before the registering of the instrument under which [such] ^{III} ^{IV} ^V the subsequent assignee or licensee claims.

S.C. 1921, c. 24, s. 39(2) ^I;
R.S. 1927, c. C-32, s. 40(3) ^{II};
S.C. 1931, c. 8, s. 9(3) ^{III};
R.S. 1952, c. C-55, s. 40(3) ^{IV};
R.S. 1970, c. C-30, s. 40(3) ^V;
R.S. 1985, c. C-42, s. 57(3)

1996

33.(2) Subsection 57(3) of the Act is replaced by the following:

57. (3) When assignment or licence is void

Any assignment of copyright, or any licence granting an interest in a copyright, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice, unless the prior assignment or licence is registered in the manner prescribed by this Act before the registering of the instrument under which the subsequent assignee or licensee claims.

Bill C-32 1996, s. 33(2)

57. (4) Rectification of Register by the Court

The Federal Court may, on application of the Registrar of Copyrights or of any [person aggrieved,] ^I interested person, order the rectification of the Register of Copyrights under this Act by

(a) the making of any entry wrongly omitted to be made in the Register,

(b) the expunging of any entry wrongly made in or remaining on the Register, or

(c) the correction of any error or defect in the Register
and any rectification of the Register under this subsection shall be retroactive from such date as the Court may order.

S.C. 1992, c. 1, s. 51 ^I;
S.C. 1993, c. 15, s. 7

1931-1992

40.(4) Rectification of register by the Court

The [Exchequer Court of Canada] ^I ^{II} ^{III} Federal Court or a judge thereof may, on application of the Registrar of Copyrights or

of any person aggrieved, order the rectification of any register of Copyrights under this Act by

(a) the making of any entry wrongly omitted to be made in the register; [or] ^I

(b) the expunging of any entry wrongly made in or remaining on the register; or

(c) the correction of any error or defect in the register;

and any such rectification of the register shall be retroactive from such date as the court or judge thereof may order.

S.C. 1931, c. 8, s. 9(4) ^I;
R.S. 1952, c. C-55, s. 40(4) ^{II};
R.S. 1970, c. C-30, s. 40(4) ^{III};
R.S. 1970 (1972), c. 10 (2nd Supp.), s. 64;
R.S. 1985, c. C-42, s. 57(4)

58. (1) [Execution of instruments in United Kingdom, Dominions, or in United States] ^I ^{II} Execution of instruments in United Kingdom, etc.

Any instruments referred to in [this section may] ^I ^{II} ^{III} section 57 may be executed, subscribed or acknowledged at any place in the United Kingdom or [in any of [His] ^I Her Majesty's dominions, colonies or possessions, or, in the United States of America,] ^I ^{II} in any of Her Majesty's Realms and Territories, or in the United States, by the assignor, grantor, licensor or mortgagor, before any notary public, commissioner or other official or the judge of any court, who is authorized by law to administer oaths or perform notarial acts in [such place] ^I ^{II} ^{III} that place, and who also subscribes his signature and affixes thereto or impresses thereon his official seal or the seal of the court of which he is such judge.

S.C. 1931, c. 8, s. 9(5) ^I;
R.S. 1952, c. C-55, s. 40(5) ^{II};
R.S. 1970, c. C-30, s. 40(5) ^{III};
R.S. 1985, c. C-42, s. 58(1)

1996

34.(1) Subsections 58(1) and (2) of the Act are replaced by the following:

58. (1) Execution of instruments

Any assignment of copyright, or any licence granting an interest in a copyright, may be executed, subscribed or acknowledged at any place in a treaty country or a Rome Convention country by the assignor, licensor or mortgagor, before any notary public, commissioner or other official or the judge of any court, who is authorized by law to administer oaths or perform notarial acts in that place, and

who also subscribes their signature and affixes thereto or impresses thereon their official seal or the seal of the court of which they are such judge.

Bill C-32 1996, s. 34(1)

58. (2) Execution of instruments in foreign countries

{Any such instrument may be} ^I ^{II} ^{III}

Any instruments referred to in section 57 may be executed, subscribed or acknowledged by the assignor, grantor, licensor or mortgagor, in any other foreign country before any notary public, commissioner or other official or the judge of any court of [such foreign] ^I ^{II} ^{III} the foreign country, who is authorized to administer oaths or perform notarial acts in [such foreign] ^I ^{II} ^{III} that foreign country and whose authority shall be proved by the certificate of a diplomatic or consular officer of the United Kingdom or of Canada [exercising] ^I ^{II} ^{III} performing his functions in [such foreign] ^I ^{II} ^{III} that foreign country.

S.C. 1931, c. 8, s. 9(6) ^I;
R.S. 1952, c. C-55, s. 40(6) ^{II};
S.C. 1970, c. C-30, s. 40(6) ^{III};
R.S. 1985, c. C-42, s. 58(2)

1996

34.(1) Subsections 58(1) and (2) of the Act are replaced by the following:

58. (2) Execution of instruments

Any assignment of copyright, or any licence granting an interest in copyright, may be executed, subscribed or acknowledged by the assignor, licensor or mortgagor, in any other foreign country, before any notary public, commissioner or other official or the judge of any court of the foreign country, who is authorized to administer oaths or perform notarial acts in that foreign country, and whose authority shall be proved by the certificate of a diplomatic or consular officer of Canada performing their functions in that foreign country.

Bill C-32 1996, s. 34(1)

58. (3) Seals to be evidence

{Such official seal or} ^I ^{II} ^{III} The official seal or seal of the court or [such certificate of] ^I ^{III} ^{II} the certificate of a diplomatic or consular officer [shall be *prima facie* evidence of] ^I [is *prima facie* evidence of] ^I ^{III} is evidence of the execution of the instrument, and the instrument with [such seal] ^I ^{II} ^{III} the seal or certificate affixed or attached thereto is admissible

as evidence in any action or proceeding brought under this Act without further proof.

S.C. 1931, c. 8, s. 9(7) ⁱ;
R.S. 1952, c. C-55, s. 40(7) ⁱⁱ;
S.C. 1970, c. C-30, s. 40(7) ⁱⁱⁱ;
R.S. 1985, c. C-42, s. 58(3)

58. (4) {no heading} ⁱ ⁱⁱ Oral testimony

The provisions of [subsections five and six of this section shall] ⁱ [subsections (5) and (6)] ⁱⁱ ⁱⁱⁱ subsections (1) and (2) shall be deemed to be permissive only, and the execution of any documents referred to [in this section may] ⁱ ⁱⁱ ⁱⁱⁱ in section 57 may in any case be proved by oral testimony.

S.C. 1931, c. 8, s. 9(8) ⁱ;
R.S. 1952, c. C-55, s. 40(8) ⁱⁱ;
S.C. 1970, c. C-30, s. 40(8) ⁱⁱⁱ;
R.S. 1985, c. C-42, s. 58(4)

1996

34.(2) Subsection 58(4) of the Act is replaced by the following:

58. (4) Other testimony

The provisions of subsections (1) and (2) shall be deemed to be permissive only, and the execution of any assignment of copyright, or any licence granting an interest in a copyright, may in any case be proved in accordance with the applicable rules of evidence.

Bill C-32 1996, s. 34(2)

FEES

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

1996

35. The Act is amended by adding the following after section 59:

PART VI
MISCELLANEOUS PROVISIONS

Bill c-32 1996, s. 35

59. Fees regulations

The Governor in Council may make regulations

(a) prescribing fees, or the manner of determining fees, to be paid for anything required or authorized to be done in the administration of this Act; and

(b) prescribing the time and manner in which the fees must be paid.

S.C. 1993, c. 15, s. 8

1985-1993

59. (1) Registration fees

The following fees shall be paid to the Minister in advance before an application for any of the following services is received:

(a) examining an application to register a copyright, including, without further fee, registering the copyright and issuing a certificate of registration of copyright, \$25.00;

(b) examining an application to register an assignment, a licence or other document affecting copyright, including, without further fee, registering the assignment, licence or other document and issuing a certificate of registration thereof.

(i) for the first work referred to in the assignment, licence or other document, \$25.00, and

(ii) for each additional work referred to in the assignment, licence or other document, \$10.00;

(c) providing copies of or extracts from the Register, or copies of certificates, licences or other documents,

(i) for each sheet, when a photocopy, \$0.50, and

(ii) for each sheet when typed, \$4.00; and

(d) certification of copies of documents, \$10.00.

R.S. 1985, c. C-42, s. 59(1)

1921-1985

41. (1) Registration fees

The following fees shall be paid to the Minister in advance before an application for any of the following purposes is received, that is to say: -

Registering a copyright	\$ 2 00
Registering an assignment of copyright, in respect of each copyright assigned including certificate of registration	1 00
Certificate of registration of copyright	1 00
Certified copies of documents or extracts: -	
For every folio of one hundred words	0 10

S.C. 1921, c. 24, s. 40(1);
R.S. 1927, c. C-32, s. 41(1);
R.S. 1952, c. C-55, s. 41(1);
R.S. 1970, c. C-30, s. 41(1)

1921-1993

59. (2) Further fee

Such further or other fees as may be necessary for the purposes of this Act may be established and imposed by order in council.

S.C. 1921, c. 24, s. 40(5);
R.S. 1927, c. C-32, s. 41(2);
R.S. 1952, c. C-55, s. 41(2);
R.S. 1970, c. C-30, s. 41(2);
R.S. 1985, c. C-42, s. 59(2)

59. (3) For all services

[The said fees shall be in full of all] ^I The fees payable under this section [shall be in full of all] ^{II} ^{III} cover all services by the Minister or any person employed by him.

S.C. 1921, c. 24, s. 40(2) ^I;
R.S. 1927, c. C-32, s. 41(3) ^{II};
R.S. 1952, c. C-55, s. 41(3) ^{III};
R.S. 1970, c. C-30, s. 41(3);
R.S. 1985, c. C-42, s. 59(3)

59. (4) No exemptions

No person [shall be] ^I ^{II} is exempt from the payment of any fee or charge payable in respect of any services performed under this Act for [such person.] ^I ^{II} ^{III} ^{IV} that person.

S.C. 1921, c. 24, s. 40(4) ^I;
R.S. 1927, c. C-32, s. 41(4) ^{II};
R.S. 1952, c. C-55, s. 41(4) ^{III};
R.S. 1970, c. C-30, s. 41(4) ^{IV};
R.S. 1985, c. C-42, s. 59(4)

59. (5) Disposal of fees

All fees received under this Act shall be paid [over to the Minister of Finance, and shall form part of the Consolidated Revenue Fund of Canada. end] ^I ^{II} [to the Minister of Finance and] ^{III} to the Receiver General and [shall] ^{III} ^{IV} form part of the Consolidated Revenue Fund.

S.C. 1921, c. 24, s. 40(3) ^I;
R.S. 1927, c. C-32, s. 41(5) ^{II};
R.S. 1952, c. C-55, s. 41(5) ^{III};
S.C. 1969, c. 28, s. 105, Sch. B ^{IV};
R.S. 1970, c. C-30, s. 41(5); SOR/78-665;
R.S. 1985, c. C-42, s. 59(5)

1986

The agrees with the recommendation in principle.

GRCRC 129, p.17

1985

Fees for registration should be set at a level which will ensure that the system is administered on a cost recovery basis.

CRC 129, p.95

SUBSTITUTED RIGHTS

S.C. 1993, c. 15, s. 9

60. (1) Subsistence of substituted right

Where any person is immediately before January 1, 1924 entitled to any right in any work that is set out in column I of Schedule I, or to any interest in such a right, he is, as from that date, entitled to the substituted right set forth in column II of that Schedule, or to the same interest in the substituted right, and to no other right or interest, and the substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made, and the work had been one entitled to copyright thereunder.

R.S. 1985, c. C-42, s. 60.(1)

1952-1985

42. (1) Subsistence of substituted right

Where any person is immediately before the 1st day of January, 1924 entitled to any such right in any work as is specified in the first column of [the First Schedule] ¹ Schedule I, or to any interest in such a right, he is, as from that date, entitled to the substituted right set forth in the second column of that Schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made, and the work had been one entitled to copyright thereunder.

R.S. 1952, c. C-55, s. 42(1) ¹;

R.S. 1970, c. C-30, s. 42(1)

1921-1952

42. (1) Subsistence of substituted right

Where any person is immediately before [the commencement of this Act entitled to] ¹ the first day of January, one thousand nine hundred and twenty-four, entitled to any

such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that Schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made, and the work had been one entitled to copyright thereunder.

S.C. 1921, c. 24, s. 41(1) ¹;

R.S. 1927, c. C-32, s. 42(1)

60. (2) Where author has assigned the right

Where the author of any work in which any right that is set out in column I of Schedule I subsists on January 1, 1924, has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired, the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before January 1, 1924 and then subsisting shall determine, but the person who immediately before the date at which the right would have expired was the owner of the right or interest is entitled at his option either

R.S. 1985, c. C-42, s. 60.(2)

1952-1985

42.(2) Where author has assigned the right

Where the author of any work in which any such right as is specified in the first column of [the First Schedule to this Act subsists] ¹ Schedule I subsists on the 1st day of January, 1924, has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired, the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the 1st day of January, 1924, and then subsisting shall determine; but the person who immediately before the date at which the right would so

have expired would was the owner of the right or interest is entitled at his option either

R.S. 1952, c. C-55, s. 42(2) ^I;
R.S. 1970, c. C-30, s. 42(2)

1921-1952

[41.(1)Proviso

Provided that, -

(a) if the author] ^I

42.(2)Where author has assigned the right

If the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists [at the commencement of this Act, has] ^I on the first day of January, one thousand nine hundred and twenty-four, has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired, the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before [the commencement of this Act and then] ^I the first day of January, one thousand nine hundred and twenty-four, and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either, -

S.C. 1921, c. 24, s. 41(1) ^I;
R.S. 1927, c. C-32, s. 42(2)

60. (2)

[(i)] ^I ^{II} (a) on giving such notice as is hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or,

[(ii)] ^I ^{II} (b) without any [such] ^I ^{II} ^{III} ^{IV} assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have [so] ^I ^{II} ^{III} ^{IV} expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the

work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without [any such] ^I ^{II} ^{III} ^{IV} payment [.] ^I; [and] ^{II} ^{III} *

[Notice] ^I ^{II} *

The notice above referred to must be given...] ^I

and the notice [above referred to must be] ^{II} ^{III} ^{IV} referred to in paragraph (a) must be given not more than one year [nor less] ^I ^{II} ^{III} or less than six months before the date at which the right would have [so] ^I ^{II} ^{III} ^{IV} expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the *Canada Gazette*.

S.C. 1921, c. 24, s. 41(1)(a)(i-ii) ^I;
R.S. 1927, c. C-32, s. 42(2)(i-ii) ^{II} *;
R.S. 1952, c. C-55, s. 42(2)(a)-(b) ^{III} *;
R.S. 1970, c. C-30, s. 42(2)(a)-(b) ^{IV};
R.S. 1985, c. C-42, s. 60(2)(a)-(b)

* margin heading with no section number in c. C-32 & c. C-55

1996

Transitional:

Subsection 42(3) of the Copyright Act, chapter C-30 of the Revised Statutes of Canada, 1970, is repealed.

Bill C-32 1996, s. 59

60. (3) ["Author" defined] ^I ^{II} ^{III} ["Author"] ^{IV}
Definition of "author"

For the purposes of this section, "author" includes the legal representatives of a deceased author.

S.C. 1921, c. 24, s. 41(2) ^I;
R.S. 1927, c. C-32, s. 42(4) ^{II};
R.S. 1952, c. C-55, s. 42(4) ^{III};
R.S. 1970, c. C-30, s. 42(4) ^{IV};
R.S. 1985, c. C-42, s. 60(3)

1921-1985

42.(3) [no heading] ^I ^{II} ^{III} Saving

[where] ^I Where any person has,

before

[the commencement of this Act,] ^I

[the first day of January, one thousand nine hundred and twenty-four,] ^{II}

[the 1st day of January, 1924,] ^{III} ^{IV}

the 1st day of January 1924,

taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner [which at] ^I ^{II} that at the time was lawful, or for the purpose of or

with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section [shall diminish or prejudice any] ^I ^{II} diminishes or prejudices any rights or interests arising from or in connection with such action [which are] ^I ^{II} that are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

S.C. 1921, c. 24, s. 41(1)(b) ^I ;

R.S. 1927, c. C-32, s. 42(3) ^{II} ;

R.S. 1952, c. C-55, s. 42(3) ^{III} ;

R.S. 1970, c. C-30, s. 42(3) ^{IV}

60. (4) Works made before this Act in force

[Subject to the provisions of subsections six and seven of section eighteen of this Act] ^I

Subject to [the provisions of] ^{II} ^{III} this Act, copyright shall not subsist in any work made before

[the commencement of this Act,] ^I

[the first day of January, one thousand nine hundred and twenty-four,] ^{II}

[the 1st day of January, 1924,] ^{III} ^{IV}

January 1, 1924 otherwise than under and in accordance with, the provisions of this section.

S.C. 1921, c. 24, s. 41(3) ^I ;

R.S. 1927, c. C-32, s. 42(5) ^{II} ;

R.S. 1952, c. C-55, s. 42(5) ^{III} ;

R.S. 1970, c. C-30, s. 42(5) ^{IV} ;

R.S. 1985, c. C-42, s. 60(3)

CLERICAL ERRORS NOT TO INVALIDATE

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, c. C-30;
R.S. 1985, c. C-42

1996

36. The heading before section 61 of the Act is replaced by the following:

CLERICAL ERRORS

Bill c-32 1996, s. 36

61. Clerical errors do not invalidate

Clerical errors in any instrument of record in the Copyright Office do not invalidate the instrument, but they may be corrected under the authority of the Registrar of Copyrights.

S.C. 1993, c. 15, s. 10

1992-1993

61. Clerical errors do not invalidate

Clerical errors that occur in the framing or copying of an instrument shall not be construed as invalidating the instrument, but when discovered they may be corrected under the authority of the Minister.

S.C. 1992, c. 1, s. 52

1921-1992

61. Clerical errors do not invalidate

Clerical errors [which occur] ^{I II III} that occur in the framing or copying of an instrument drawn by any officer or employee [in or of the Department] ^I in or of the Copyright Office shall not be construed as invalidating [such instrument,] ^{I II III IV V} that instrument, but when discovered they may be corrected under the authority of the Minister.

S.C. 1921, c. 24, s. 42 ^I;
S.C. 1923, c. 10, s. 4 ^{II};
R.S. 1927, c. C-32, s. 43 ^{III};
R.S. 1952, c. C-55, s. 43 ^{IV};
R.S. 1970, c. 30, s. 43 ^V;
R.S. 1985, c. C-42, s. 61

RULES AND REGULATIONS

S.C. 1921, c. 24;
R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

1996

37.(1) The heading before section 62 of the English version of the Act is replaced by the following:

REGULATION

Bill C-32 1996, s. 37(1)

62.(1) Governor in Council to make rules and forms

The Governor in Council may make such rules and regulations and prescribe such forms as appear to him necessary and expedient for the purposes of this Act.

S.C. 1921, c. 24, s. 43;
R.S. 1927, c. C-32, s. 44(1);
R.S. 1952, c. C-55, s. 44(1);
R.S. 1970, c. 30, s. 44(1);
R.S. 1985, c. C-42, s. 62(1)

1996

37.(2) Subsection 62(1) of the Act is replaced by the following:

62.(1) Regulations

The Governor in Council may make regulations

- (a) prescribing anything that by this Act is to be prescribed by regulations; and
- (b) generally for carrying out the purposes and provisions of this Act.

Bill C-32 1996, s. 37(2)

62. (2) Rights saved

The Governor in Council may make orders for altering, revoking or varying any order in council made under this Act, but any order made under this section [shall not] ^{I II III} does not affect prejudicially any rights or interests acquired or accrued at the date when the order comes into operation, and shall provide for the protection of [such rights] ^{I II III IV} those rights and interests.

S.C. 1921, c. 24, s. 45(1) ^I;
R.S. 1927, c. C-32, s. 44(2) ^{II};
R.S. 1952, c. C-55, s. 44(2) ^{III};
R.S. 1970, c. 30, s. 44(2) ^{IV};
R.S. 1985, c. C-42, s. 62(2)

GENERAL

R.S. 1927, c. C-32;
R.S. 1952, c. C-55;
R.S. 1970, C-30;
R.S. 1985, C-42

1996

38. Section 63 of the Act and the heading before it are replaced by the following:

INDUSTRIAL DESIGNS AND TOPOGRAPHIES

Bill C-32 1996, s. 38

63. No copyright unless under this Act

No person [shall be] ¹ ^{II} is entitled to copyright or any similar right in any literary, dramatic, musical or artistic work otherwise than under and in accordance with [the provisions of] ¹ ^{II} ^{III} this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

S.C. 1921, c. 24, s. 44 ¹;
1927, c. C-32, s. 45 ^{II};
R.S. 1952, c. C-55, s. 45 ^{III};
R.S. 1970, c. 30, s. 45;
R.S. 1985, c. C-42, s. 63

1996

PART IX GENERAL PROVISIONS

89. No copyright, etc., except by statute
No person is entitled to copyright otherwise than under and in accordance with this Act or any other Act of Parliament but nothing in this section shall be construed as abrogating any right or jurisdiction in respect of a breach of trust or confidence.

Bill C-32 1996, s. 50

90. Interpretation

No provision of this Act relating to
(a) copyright in performer's performances, sound recordings or communication signals, or
(b) the right of performers or makers to remuneration
shall be construed as prejudicing any rights conferred by Part I.

Bill C-32 1996, s. 50

91. Adherence to Berne and Rome Conventions

The Governor in Council shall take such measures as are necessary to secure the adherence of Canada to

(a) the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, as revised by the Paris Act of 1971; and

(b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961

Bill C-32 1996, s. 50

92. (1) Review of Act

Within five years after the coming into force of this section, the Minister shall cause to be laid before both Houses of Parliament a report on the provisions and operation of this Act, including any recommendations for amendments to this Act.

92. (2) Reference to parliamentary committee

The report stands referred to the committee of the House of Commons, or of both Houses of Parliament, that is designated or established for that purpose, which shall

(a) as soon as possible thereafter, review the report and undertake a comprehensive review of the provisions and operation of this Act; and

(b) report to the House of Commons, or to both Houses of Parliament, within one year after the laying of the report of the Minister or any further time that the House of Commons, or both Houses of Parliament, may authorize.

Bill C-32 1996, s. 50

64.(1) Interpretation

In this section and section [46.1] ¹

64.1

"article"

means any thing that is made by hand, tool or machine;

"design"

means features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye;

"useful article"

means an article that has a utilitarian function and includes a model of any such article;

"utilitarian function"

in respect of an article, means a function other than merely serving as a substrate or carrier for artistic or literary matter.

Bill C-60 1987, s. 11 ¹

S.C. 1988, c. 15, s. 11 ¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 11

1921-1988

64.(1) Application of Act to designs

[As to application to designs registerable under R.S., c. 71] ^I

[As to application to designs] ^{II} ^{III}

This Act [shall not] ^I ^{II} does not apply to designs capable of being registered under the [Trade Mark and Design Act,] ^I ^{II} [Industrial Design and Union Label Act,] ^{III} Industrial Design Act, except designs [which] ^I ^{II} that, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

S.C. 1921, c. 24, s. 46(1) ^I;

1927, c. C-32, s. 46(1) ^{II};

R.S. 1952, c. C-55, s. 46(1) ^{III};

R.S. 1970, c. C-30, s. 46(1);

R.S. 1985, c. C-42, s. 64(1)

1986

The government accepts these recommendations.

GRCRC 32, 33, p.6

1985

Work on the revision of the *Industrial Design Act* should be accelerated.

CRC 32, p.27

Pending revision of the *Industrial Design Act*, section 46 of the *Copyright Act* should be immediately amended to eliminate the availability of copyright to protect industrial articles incorporating functional designs.

CRC 33, p.27

1984

The Department of Consumer and Corporate Affairs is in the process of drawing up recommendations for the revision of the *Industrial Design Act*. At that time, the Department will address the relationship between the *Copyright Act* and the *Industrial Design Act* and will be making appropriate recommendations for delineating the boundary between these two forms of protection. In the interim, the present section 46 will be retained.

GT p.15

1977

That Canada not accede to the (Vienna) Agreement, pending decisions reached with respect to industrial design legislation.

CC p.229

64. (2) Non-infringement re certain designs

Where copyright subsists in a design applied to a useful article or in an artistic work from which the design is derived and, by or under the authority of any person who owns the copyright in Canada or who owns the copyright elsewhere,

(a) the article is reproduced in a quantity of more than fifty, or,

(b) where the article is a plate, engraving or cast, the article is used for producing more than fifty useful articles. it shall not thereafter be an infringement of the copyright or the moral rights for anyone

(c) to reproduce the design of the article or a design not differing substantially from the design of the article by

(i) making the article, or

(ii) making a drawing or other reproduction in any material form of the article, or

(d) to do with an article, drawing or reproduction that is made as described in paragraph (c) anything that the owner of the copyright has the sole right to do with the design or artistic work in which the copyright subsists.

S.C. 1988, c. 15, s. 11;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 11

1921-1988

64.(2) [no heading] ^I ^{II} ^{III}

Rules for determining use of design

General rules under [section thirty-nine of the *Trade Mark and Design Act*,] ^I [the provisions of the *Trade Mark and Design Act*,] ^{II} [the provisions of the *Industrial Design and Union Label Act*,] ^{III} the *Industrial Design Act*, may be made for determining the conditions under which a design shall be deemed to be used for [such purposes as aforesaid. and] ^I ^{II} ^{III} ^{IV} the purposes referred to in subsection (1).

S.C. 1921, c. 24, s. 46(2) ^I;

R.S. 1927, c. C-32, s. 46(2) ^{II};

R.S. 1952, c. C-55, s. 46(2) ^{III};

R.S. 1970, c. C-30, s. 46(2) ^{IV};

R.S. 1985, c. C-42, s. 64(2)

1987

46(2) Non-infringement re certain designs

Where copyright subsists in a design applied to a useful article or in a work from which the design is derived and, by or under the authority of any person who owns the copyright in Canada or who owns copyright elsewhere,

(a) the article is reproduced in a quantity of more than fifty,

(b) where in respect of a non-hand-made article that has a repeated pattern applied thereto, the article is severed into lengths or pieces suitable for textile piece goods, a surface covering or making wearing apparel, or

(c) where the article is a plate, engraving or cast, the article is used for

producing more than fifty useful articles, it shall not thereafter be an infringement of the copyright for anyone

(d) to reproduce the design of the article or a design not differing substantially from the design of the article by

(i) making the article, or

(ii) making a drawing or other reproduction in any material form of the article, or

(e) to do with an article, drawing or reproduction that is made as described in paragraph (d) anything that the owner of the copyright has the sole right to do with the design or work in which the copyright subsists...

Bill C-60 1987, s. 11, pp. 6-7

64. (3) Exception

Subsection (2) does not apply in respect of the copyright or the moral rights in an artistic work in so far as the work is used as or for

(a) a graphic or photographic representation that is applied to the face of an article;

(b) a trade-mark or a representation thereof or a label;

(c) material that has a woven or knitted pattern or that is suitable for piece goods or surface covering or for making wearing apparel;

(d) an architectural work [of art] ¹ that is a building or a model of a building;

(e) a representation of a real or a fictitious being, event or place that is applied to an article as a feature of shape, configuration, pattern or ornament;

(f) articles that are sold as a set, unless more than fifty sets are made; or

(g) such other work or article as may be prescribed by regulation of the Governor in Council.

S.C. 1988, c. 15, s. 11 ¹;
R.S., 1985 (1988), c. 10 (4th Supp.), s. 11 ¹;
S.C. 1993, c. 44, s. 68

1996

39. Paragraph 64(3)(g) of the Act is replaced by the following:

(g) such other work or article as may be prescribed by regulation.

Bill C-32 1996, s. 39

1987

64 (3) Exceptions

Subsection (2) does not apply in respect of any copyright in an artistic

work in so far as the work is used as or for

(a) a card, poster, game board, calendar, stamp, transfer or any other printed matter primarily of an artistic or literary character;

(b) a trade-mark or label;

(c) an artistic work applied to the covering of or container for an included article or product;

(d) an architectural work of art; or

(e) such other work or article as may be prescribed by regulations of the Governor in Council.

Bill C-60 1987, s. 11., p.7

64. (4) Idem

Subsections (2) and (3) apply only in respect of designs created after the coming into force of this subsection and section [46] ¹ 64 of this Act and the *Industrial Design Act*, as they read immediately before the coming into force of this subsection, as well as the rules made under them, continue to apply in respect of designs created before that coming into force.

S.C. 1988, c. 15, s. 11 ¹;
R.S., 1985, c. 10 (4th Supp.), s. 11

64.1 (1) Non-infringement re useful article features

The following acts do not constitute an infringement of the copyright or moral rights in a work:

(a) applying to a useful article features that are dictated solely by a utilitarian function of the article;

(b) by reference solely to a useful article, making a drawing or other reproduction in any material form of any features of the article that are dictated solely by a utilitarian function of the article;

(c) doing with a useful article having only features described in paragraph (a) or doing with a drawing or reproduction that is made as described in paragraph (b) anything that the owner of the copyright has the sole right to do with the work; [or] ¹ and

(d) using any method or principle of manufacture or construction.

S.C. 1988, c. 15, s. 11 ¹;
R.S., 1985, c. 10 (4th Supp.), s. 11

1987

The following acts do not constitute an infringement of copyright in a work:

(a) applying to a useful article features that are dictated solely by a utilitarian function of the article;

(b) by reference solely to a useful article, making a drawing or other reproduction in any material form of any features of the article that are dictated solely by a utilitarian function of the article;

(c) doing with a useful article having only features described in paragraph (a) or doing with a drawing or reproduction that is made as described in paragraph (b) anything that the owner of the copyright has the sole right to do with the work; or

(d) using any method or principle of manufacture or construction.

Bill C-60 1987, s. 11, pp. 7-8

64.1 (2) Exception

Nothing in subsection (1) affects the copyright or the moral rights in a record, perforated roll, cinematographic film or other contrivance by means of which a work may be mechanically reproduced, performed or delivered.

S.C. 1988, c. 15, s. 11;

R.S., 1985, c. 10 (4th Supp.), s. 11

1996

40. Paragraph 64.1(2) of the Act is replaced by the following:

64.1(2) Exception

Nothing in subsection (1) affects

(a) the copyright, or

(b) the moral rights, if any,

in any sound recording cinematographic recording by means of which a work may be mechanically reproduced or performed.

Bill C-32 1996, s. 40

64.2 (1) Application of Act to topography

This Act does not apply, and shall be deemed never to have applied, to any topography or to any design, however expressed, that is intended to generate all or part of a topography.

S.C. 1990, c. 37, s. 33

64.2 (2) Computer programs

For greater certainty, the incorporation of a computer program into an integrated circuit product or the incorporation of a work into such a

computer program may constitute an infringement of the copyright or moral rights in a work.

S.C. 1990, c. 37, s. 33

64.2 (3) Definitions

In this section "topography" and "integrated circuit product" have the same meaning as in the *Integrated Circuit Protection Act*.

S.C., 1990, c. 37, s. 33

Repealed

S.C. 1993, c. 44, s. 69

[CONVENTION OF BERNE]

S.C. 1921, c. 24;

R.S. 1927, c. C-32,;

R.S. 1952, c. C-55;

R.S. 1970, c. C-30;

R.S. 1985, c. C-42

65. Repealed, [Adherence to Convention of Berne]

S.C. 1993, c. 44, s. 69

1921-1993

65. Adherence to Convention of Berne

The Governor in Council may take such actions as may be necessary to secure the adherence of Canada to the revised Convention of Berne, signed [the thirteenth day of November,] ^I ^{II} [the 13th day of November,] ^{III} ^{IV} November 13, 1908, and the Additional Protocol thereto signed at Berne [the twentieth day of March,] ^I ^{II} [the 20th day of March,] ^{III} ^{IV} March 20, 1914, set out in [the Second Schedule to this Act] ^I ^{II} [the Second Schedule] ^{III} Schedule II.

S.C. 1921, c. 24, s. 49 ^I;

R.S. 1927, c. C-32, s. 48 ^{II};

R.S. 1952, c. C-55, s. 47 ^{III};

R.S. 1970, c. C-30, s. 47 ^{IV};

R.S. 1985, c. C-42, s. 65

1977

That Canada remain at the present level of international participation in respect of the Berne Convention and the Universal Copyright Convention.

CC p.236

COPYRIGHT BOARD

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1996

41. The Act is amended by adding the following before the heading "Copyright Board" before section 66:

PART VII

COPYRIGHT BOARD AND COLLECTIVE ADMINISTRATION OF COPYRIGHT

Bill C-32, 1996 s. 41

1992

126. The heading before section 66 and sections 66 to 66.9 of the said Act are repealed.

Bill C-93 1992, s. 126

66. (1) Establishment

There is hereby established a Board, to be known as the Copyright Board, consisting of not more than five members, including a chairman and vice-chairman, to be appointed by the Governor in Council.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1936-1988

Board constituted

The Copyright Appeal Board shall consist of three members, who shall be appointed by the Governor in Council.

S.C. 1936, c. 28, s. 10B.(1);

R.S. 1952, c. C-55, s. 50(1);

R.S. 1970, c. C-30, s. 50(1);

R.S. 1985, c. C-42, s. 68(1)

1986

The issue raised in recommendation 111, however, will be examined at the same time as recommendations 114 to 126 regarding the Copyright Appeal Board.

GRCRC 111, p.16

The government generally agrees with the recommendation.

GRCRC 114, p.17

The government generally agrees with these recommendations. The conditions that will apply to the Board - its jurisdiction, powers, organization and operations - remain, however, to be articulated.

GRCRC 115 to 126, p.17

1985

The Copyright Appeal Board should be vested with the authority to regulate all collectives.

CRC 111, p.88

The Copyright Appeal Board should be re-named the Copyright Board.

CRC 114, p.89

The Board should not be granted powers to intervene in the administration of collectives.

CRC 115, p.90

The Board's jurisdiction should be limited to setting rates.

CRC 117, p.91

Previously approved rates should remain in effect until such time as the Board has approved new rates.

CRC 120, p.92

The Board should be composed of five permanent members, appointed for a fixed renewable term by the Governor in Council.

CRC 122, p.93

Members should have legal, financial or copyright expertise.

CRC 124, p.93

1984

The existing Board could... be replaced by a revised Board, which would have an expanded role, including the power to approve rate structures.

GT p.63

1977

That a Copyright Tribunal be created to replace the current Copyright Appeal Board.

CC p.272

66. (2) Service

The members of the Board shall be appointed to serve either full-time or part-time.

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1987

The chairman and vice-chairman shall be appointed to serve full-time and the other members of the Board shall be appointed to serve either full-time or part-time.

Bill C-60 1987, s. 12

1984

The Board would consist of members appointed by the Governor in Council on a full- or part-time basis depending on the workload. Members could be appointed for a fixed term subject to renewal and could be removed only for cause. Initial terms could be staggered to ensure continuity of membership. The Chairman could be chosen from among the membership by the Governor in Council.

GT p.64

66. (3) Chairman

The chairman must be a judge, either sitting or retired, of a superior, county or district court.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1936-1988

Chairman and members

One of the members of the Copyright Appeal Board shall be a person who holds or has held high judicial office and he shall be the Chairman of the Board, [The other two] ¹ the other two members of the Board shall be selected from officers of the public service of Canada.

S.C. 1936, c. 28, s. 10B.(2) ¹;

R.S. 1952, c. C-55, s. 50(2);

R.S. 1970, c. C-30, s. 50(2) ;

R.S. 1985, c. C-42, s. 68(2)

66. (4) Tenure

Each member of the Board shall hold office during good behaviour for a term not exceeding five years, but may be removed at any time by the Governor in Council for cause.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1986

The government generally agrees with these recommendations... The conditions that will apply to the Board - its jurisdiction, powers, organization and operations - remain, however, to be articulated.

GRCRC 123, p.17

1985

Members should be removable only for cause.

CRC 123, p. 93

66. (5) Reappointment

A member of the Board is eligible to be re-appointed once only.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66. (6) Prohibition

A member of the Board shall not be employed in the Public Service within the meaning of the *Public Service Staff Relations Act* during the member's term of office.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66. (7) [Deemed public service employees] ¹ Members deemed public service employees

A full-time member of the Board, other than the chairman, shall be deemed to be employed in

(a) the Public Service for the purposes of the *Public Service Superannuation Act*; and

(b) the public service of Canada for the purposes of any regulations made pursuant to [section 7.7] ¹ section 9 of the *Aeronautics Act*.

S.C. 1988, c. 15, s. 12 ¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1987

A member of the Board, other than the chairman, shall be deemed to be employed in

(a) the Public Service for the purposes of the *Public Service Superannuation Act*; and
(b) the public service of Canada for the purposes of any regulations made pursuant to section 7.7 of the *Aeronautics Act*.

Bill C-60 1987, s. 12

66.1 (1) Duties of chairman

The chairman shall direct the work of the Board and apportion its work among the members of the Board.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.1 (2) Absence or incapacity of chairman

If the chairman is absent or incapacitated or if the office of chairman is vacant, the vice-chairman has all the powers and functions of the chairman during the absence, incapacity or vacancy.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.1 (3) Duties of vice-chairman

The vice-chairman is the chief executive officer of the Board and has supervision over and direction of the Board and its staff.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.2 Remuneration and expenses

The members of the Board shall be paid such remuneration as may be fixed by the Governor in Council and are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties under this Act while absent from their ordinary place of residence.

S.C. 1988, c. 15, s. 12;

R.S., 1985 (1988), c. 10 (4th Supp.), s. 12

1936-1988

68(2) [Traveling and living expenses] ¹ ^{II} Travel and living expenses

No fees or emoluments of any kind shall be payable to, or received by, any member of the Board in connection with services rendered as [such member] ¹ ^{II} ^{III} a member, but the [said members] ¹ ^{II} members shall be paid actual travel and living

expenses necessarily incurred in connection with the business of the Board.

S.C. 1936, c. 28, s. 10B.(3) ^I;
R.S. 1952, c. C-55, s. 50(3) ^{II};
R.S. 1970, c. C-30, s. 50(3) ^{III};
R.S. 1985, c. C-42, s. 68(2)

1987

41.2 (1) Remuneration and expenses

The members of the Board, other than the chairman, shall be paid such remuneration as may be fixed by the Governor in Council and are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties under this Act while absent from their ordinary place of residence.

41.2 (2) Expenses of chairman

The chairman is entitled to be paid such reasonable travel and other expenses as a judge is entitled to receive in accordance with the *Judges' Act*.

Bill C-60 1987, s. 12

66.3 (1) Conflict of interest prohibited

A member of the Board shall not, directly or indirectly, engage in any activity, have any interest in a business or accept or engage in any office or employment that is inconsistent with the member's duties.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.3 (2) Termination of conflict of interest

Where a member of the Board becomes aware that he is in conflict of interest contrary to subsection (1), the member shall, within one hundred and twenty days, terminate the conflict or resign.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S., 1985 (1988), c. 10 (4th Supp.), s. 12

66.4 (1) Staff

Such officers and employees as are necessary for the proper conduct of the work of the Board shall be appointed in accordance with the *Public Service Employment Act*.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S., 1985 (1988), c. 10 (4th Supp.), s. 12

1986

The government generally agrees with these recommendations... The conditions that will apply to the Board - its jurisdiction, powers, organization and

operations - remain, however, to be articulated.

GRCRC 125, p.17

1985

The Board should be supported by its own staff and outside professional assistance as required.

CRC 125, p.93

1984

The Board... could have administrative and research staff under its direction.

GT p.64

66.4 (2) Idem

The officers and employees referred to in subsection (1) shall be deemed to be employed in the Public Service for the purposes of the *Public Service Superannuation Act*.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S., 1985 (1988), c. 10 (4th Supp.), s. 12

66.4 (3) Technical assistance

The Board may engage on a temporary basis the services of persons having technical or specialized knowledge to advise and assist in the performance of its duties and the Board may, in accordance with Treasury Board directives, fix and pay the remuneration and expenses of those persons.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S., 1985 (1988), c. 10 (4th Supp.), s. 12

1936-1988

68. (5) Aid in advisory capacity

The Copyright Appeal Board may call to its aid in an advisory capacity the services of any person having technical or special knowledge of the matters in question before it and may pay [such] ^I ^{II} ^{III} person such fees or other remuneration and actual travel and living expenses as may be approved by the Minister.

S.C. 1936, c. 28, s. 10B.(5) ^I;

R.S. 1952, c. C-55, s. 50(5) ^{II};

R.S. 1970, c. C-30, s. 50(5) ^{III};

R.S. 1985, c. C-42, s. 68(5)

1986

The government generally agrees with these recommendations... The conditions that will apply to the Board - its jurisdiction, powers, organization and operations - remain, however, to be articulated.

GRCRC 125, p.17

1985

The Board should be supported by its own staff and outside professional assistance as required.

CRC 125, p.93

66.5 (1) [Extension] ¹ Concluding matters after membership expires

A member of the Board whose term expires may conclude the matters that the member has begun to consider.

Bill C-60 1987, s. 12 ¹;
S.C. 1988, c. 15, s. 12 ¹;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.5 (2) Decisions

Matters before the Board shall be decided by a majority of the members of the Board and the presiding member shall have a second vote in the case of a tie.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.51 Interim decisions

The Board may, on application, make an interim decision.

S.C. 1988, c. 15, s. 12;
R.S., 1985 (1988), c. 10 (4th Supp.), s. 12

66.52 Variation of decisions

A decision of the Board respecting royalties that are effective for more than one year or their related terms and conditions that is made under subsection [49.2(1), 50.2(2) or 50.6(1)] ¹ [67.2(1), 70.2(2), or 70.6(1)] ^{II} 67.2 (1), 70.2(2), 70.6(1) or 70.63(1) may, on application made at least one year after the royalties become effective, be varied by the Board if, in its opinion, there has been a material change in the circumstances pertaining to the decision since it was made.

S.C. 1988, c. 15, s. 12 ¹;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12 ^{II};
S.C. 1988, c. 65, s. 64

1996

42. Section 66.52 of the Act is replaced by the following:

66.52 Variation of decisions

A decision of the Board respecting royalties or their related terms and conditions that is made under 68(3), section 68.1, subsection 68.3(4), section 70.15 or subsections 70.2(2), 70.6(1), 73(1) or 83(8) may, on application, be varied by the Board if, in its opinion, there has been a material change in circumstances since the decision was made.

Bill C-32 1996, s. 42

66.6 (1) Regulations

The Board may, with the approval of the Governor in Council, make regulations [not inconsistent with the Act governing] ¹ governing

(a) the practice and procedure in respect of the Board's hearing, including the number of members of the Board that constitutes a quorum;

(b) the time and manner in which applications and notices must be made or given;

(c) the establishment of forms for the making or giving of applications and notices; and,

(d) the carrying out of the work of the Board, the management of its internal affairs and the duties of its officers and employees.

S.C. 1988, c. 15, s. 12 ¹;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12
1936-1988

68(5) Rules and provisions

Subject to [the provisions of] ¹ ^{II} this Act, the Copyright Appeal Board may make rules and provisions respecting

(a) the sittings of the Board;

(b) the manner of dealing with matters and business before the Board; and

(c) generally, the carrying on of the work of the Board and the management of its internal affairs.

S.C. 1936, c. 28, s. 10B.(4) ¹;
R.S. 1952, c. C-55, s. 50(4) ^{II};
R.S. 1970, c. C-30, s. 50(4);
R.S. 1985, c. C-42, s. 68(5)

1987

48.6 (1) Regulations

The Board may, with the approval of the Governor in Council, make regulations not inconsistent with this Act governing

(a) the practice and procedure in respect of the Board's hearings;

(b) the time and manner in which applications and notices must be made or given;

(c) the establishment of forms for the making or giving of applications and notices; and,

(d) for the carrying out of the work of the Board, the management of its internal affairs and the duties of its officers and employees.

Bill C-60 1987, s. 12

66.6 (2) Publication of proposed regulations

A copy of each regulation that the Board proposes to make under

subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be given to interested persons to make representations with respect thereto.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;
R.S. 1985, c. 10 (4th Supp.), s. 12

66.6 (3) Exception

No proposed regulation that has been published pursuant to subsection (2) need again be published under that subsection, whether or not it has been altered as a result of representations made with respect thereto.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.7 (1) General powers, etc.

The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its decisions and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1986

The government generally agrees with these recommendations... The conditions that will apply to the Board - its jurisdiction, powers, organization and operations - remain, however, to be articulated.

GRCRC 118, 119, 121 & 126, p.17

1985

The Board should be granted the usual powers of a court of record, including the authority to issue subpoenas and require the production of documents.

CRC 118, p.92

Dealings with the Board should be with the Board directly, and not through the responsible Minister.

CRC 119, p.92

The Board's decisions should be subject to appeal to the Federal Court on matters of law.

CRC 121, p.92

The Board should be an independent body reporting to Parliament through the responsible Minister.

CRC 126 p.93

1984

The Board would be an independent body reporting to Parliament through the responsible Minister.

GT p.64

1977

That the Tribunal be given sufficient discretionary powers to enable it to function properly:

- to determine and establish its own procedures and the means of exercising its powers; and
- to ensure that royalties are distributed for the purposes for which they are collected.

CC p.223

66.7 (2) Enforcement of decisions

Any decision of the Board may, for the purposes of its enforcement, be made an order of the Federal Court or any superior court and is enforceable in the same manner as an order [of the court and] thereof.

Bill C-60 1987, s. 12 ¹;
S.C. 1988, c. 15, s. 12 ¹;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.7 (3) Procedure

To make a decision of the Board an order of a court, the usual practice and procedure of the court in such matters may be followed or a certified copy of the decision may be filed with the registrar of the court and thereupon the decision becomes an order of the court.

Bill C-60 1987, s. 12;
S.C. 1988, c. 15, s. 12;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.7 (4) Effect of variation of decision

Where a decision of the Board that has been made an order of a court is varied by a subsequent decision of the Board, the order of the court shall be deemed to have been varied accordingly and the subsequent decision may, in the same manner, be made an order of the court.

S.C. 1988, c. 15, s. 12;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1996

43. The Act is amended by adding the following after section 66.7:

66.71 Distribution, publication of notices
Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board may at any time cause to be distributed or published, in any manner and on any terms and

conditions that it sees fit, any notice that it sees fit to be distributed or published.

Bill C-32 1996, s. 43

66.8 Studies

The Board shall conduct such studies with respect to the exercise of its powers as are requested by the Minister.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.9 (1) Report

The Board shall, not later than August 31 in each year, submit [an annual report to the Governor in Council through the Minister on] ¹ to the Governor in Council through the Minister an annual report on the Board's activities for the proceeding year describing briefly the applications made to the Board, the Board's decisions and any other matters that the Board considers relevant.

Bill C-60 1987, s. 12 ¹;

S.C. 1988, c. 15, s. 12 ¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

66.9 (2) Tabling

The Minister shall cause a copy of each annual report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.

Bill C-60 1987, s. 12;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1996

44. The Act is amended by adding the following after section 66.9:

66.91 Regulations

The Governor in Council may make regulations prescribing directives to the Board and establishing general criteria to be applied by the Board or to which the Board must have regard

(a) in establishing royalties to be paid pursuant to this Act; and,

(b) in rendering its decisions in any matter within its jurisdiction.

Bill C-32 1996, s. 44

[Performing Rights Societies] ¹
**COLLECTIVE ADMINISTRATION OF
 PERFORMING RIGHTS**

R.S. 1952, c. C-55 ¹;
 R.S. 1970, c. C-30 ¹;
 R.S. 1985, c.C-42 ¹;
 S.C. 1988, c. 15, s. 12;
 R.S. 1985 (1988), c.10 (4th Supp.), s. 12

1996

45. The heading before section 67 and sections 67 to 68 are replaced by the following

**COLLECTIVE ADMINISTRATION OF
 PERFORMING RIGHTS AND OF
 COMMUNICATION RIGHTS**

Bill C-32 1996, s. 45

**67. (1) Performance and
 communication rights**

Each society, association or corporation that carries on

(a) the business of granting licences for the performance in public of dramatico-musical or musical works, or

(b) the business of granting licences for the communication to the public by telecommunication of dramatico-musical or musical works, other than the communication of those works in a manner described in subsection 28.01(2),

shall, from time to time, file at the Copyright Office lists of all dramatico-musical and musical works in current use in respect of which the society, association or corporation has authority to grant such licences.

S.C. 1993, c. 23, s. 3(1);
 S.C. 1993, c. 44, s. 70(1)

1988-1993

67. (1) Performing rights

Each society, association or corporation that carries on the business of granting licences for the performance in Canada of dramatico-musical or musical works, shall, from time to time, file at the Copyright Office lists of all dramatico-musical and musical works in current use in respect of which the society, association or corporation has authority to grant performing licences.

Bill C-60 1987, s. 12
 S.C. 1988, c. 15, s. 12;
 R.S. 1985 (1988), c.10 (4th Supp.), s. 12

1936-1988

66. (1) Performing rights

Each society, association or company [which] ¹ ^{II} that carries on in Canada the business of acquiring copyrights [in] ¹ of dramatico-musical or musical works or of performing rights therein, and [which] ¹ ^{II} deals with or in the issue or grant of licences for the performance in Canada of dramatico-musical or musical works in which copyright subsists shall, from time to time, file with the Minister at the Copyright Office lists of all dramatico-musical or musical works in current use in respect of which [such] ¹ ^{II} ^{III} ^{IV} the society, association or company [claims authority] ¹ has authority to issue or grant performing licences or to collect fees, charges or royalties for or in respect of the performance of its works in Canada.

S.C. 1938, c. 28, s. 2 ¹;
 S.C. 1938, c. 27, s. 1 ^{II};
 R.S. 1952, c. C-55, s. 48(1) ^{III};
 R.S. 1970, c. C-30, s. 48(1) ^{IV};
 R.S. 1985, c.C-42, s. 66(1)

1931-1936

10.(1) Performing Rights

Each association, society or company which carries on in Canada the business of acquiring copyrights of dramatico-musical or musical works or of performing rights therein, and which deals with or in the issue of grant of licences for the performance in Canada of dramatico-musical or musical works in which copyright subsists, shall, from time to time, file with the Minister at the Copyright Office:

S.C. 1931, c. 8, s. 10(1)

10.(1)(a) Lists of works to be filed

Lists of all dramatico-musical or musical works, in respect of which such association, society or company claims authority to issue or grant performing licences or to collect fees, charges or royalties for or in respect of the performance of such works in Canada; and

S.C. 1931, c. 8, s. 10(1)(a)

1996

67. (1) Public access to repertoires

Each collective society that carries on

(a) the business of granting licences or collecting royalties for the performance in public of musical works, dramatico-musical works, performer's performances of such works, or sound recordings embodying such works, or

(b) the business of granting licences or collecting royalties for the communication to the public by telecommunication of musical works, dramatico-musical works, performer's

performances of such works, or sound recordings embodying such works, other than the communication of musical works or dramatico-musical works in a manner described in subsection 31(2)

shall make available to the public for consultation, during normal business hours, the repertoire of all musical works, dramatico-musical works, performer's performances of such works, or sound recordings embodying such works in current use in respect of which the collective society has authority to grant such licences or collect royalties, along with such information relating thereto as prescribed by regulations made under subsection (2).

67.(2) Regulations

The Governor in Council may make regulations prescribing the information to be included in the repertoire mentioned in subsection (1).

Bill C-32 1996, s. 45

1986

The government agrees with this recommendation in principle.

GRCRC 110, p.16

The government agrees with these recommendations in principle.

GRCRC 112 & 113, p.16

1985

The collective exercise of copyright should be encouraged.

CRC 110, p.88

Memberships in collectives should continue to be voluntary.

CRC 112, p.88

Creators should continue to be allowed to grant exclusive licences to collectives.

CRC 113, p.88

1984

It is envisaged that the *Copyright Act* would permit the wider use of copyright societies... These societies would arise from private initiatives when prompted by market forces... To protect the public from possible excesses by copyright societies, they should be subject to the control of a revised Copyright Appeal Board.

GT p.62

To meet the concerns of copyright owners that their right to be protected from potential abuse by the societies, the new Act would provide that:

- the Governor in Council may establish a standard licensing agreement for the licensing of rights from a copyright owner to a society. This provision will ensure that copyright owners are not forced to enter into contractual commitments of an unnecessarily long duration or to assign rights in bulk to a society. A copyright owner would be allowed to grant one or more rights to a society or retain certain rights;
- a revised Copyright Appeal Board would ensure that the Board of Directors of societies be elected democratically by the members of the societies.

GT pp. 62-63

1977

That any new *Copyright Act* allow, as it does presently and encourage the

formation of collectives to protect authors' and publishers' interests under the supervision of a governmental tribunal.

CC p.165

That the collective exercise of copyright be encouraged as a means of satisfying the needs of both authors and users.

That, if any collectives are formed to exercise any right given under a new Act, their regulation, control and review be the responsibility of the appropriate agency designated.

CC p.214

67. (2) Filing of statement of royalties

Each society, association or corporation referred to in subsection (1) shall, on or before the [September 1 immediately preceding] ¹ first day of September next preceding the date when its last statement approved pursuant to subsection [49.2(1)] ¹ 67.2(1) expires, file with the [Tribunal] ^{III} Board a statement in both official languages of all royalties that the society, association or corporation proposes to collect for the grant of the licences [for the performance of works in Canada. ^{and}] ¹ ^{II} referred to in subsection (1).

Bill C-60 1987, s. 12 ¹;

S.C. 1988, c. 15, s. 12 ¹;

R.S. 1985 (1988), c.10 (4th Supp.), s. 12 ^{II};

S.C., 1993, c. 23, s. 3(1);

S.C. 1993, c. 44, s. 70(1);

S.C. 1993, c. 44, s. 80 ^{III no assent}

1970-1988

66.(2) Tariffs of fees, charges or royalties to be filed annually

Each [such] ¹ society, association or company [referred to in subsection (1)] ^{II} ^{III} shall, on or before September 1 [in each and every year] ¹ ^{II} in every year, file with the Minister at the Copyright Office statements of all fees, charges or royalties [which such] ¹ [that such] ^{II} that the society, association or company proposes during [the next ensuing calendar year] ¹ ^{II} the next following calendar year to collect in compensation for the issue or grant of licences for or in respect of the performance of its works in Canada.

S.C. 1984, c. 40, s. 18(2) ¹;

R.S. 1985, c.C-42, s. 66(2) ^{II};

R.S. 1985 (1984), c.10 (1st Supp.), s. 1(1) ^{III}

1970-1984

48.(2) Tariffs of fees, charges or royalties to be filed annually

Each such society, association or company shall, on or before the 1st day of

November in each and every year, file with the Minister at the Copyright Office statements of all fees, charges or royalties which such society, association or company proposes during the next ensuing calendar year to collect in compensation for the issue or grant of licences for or in respect of the performance of its works in Canada.

R.S. 1970, c. C-30, s. 48(2)

1936-1970

10.(2) Tariffs of fees, charges or royalties to be filed annually

Each such society, association or company shall, on or before [the first day of November, one thousand nine hundred and thirty-six, and, thereafter, on or before the first day of November] ¹ the 1st day of November, 1936, and thereafter, on or before the 1st day of November in each and every year, file, with the Minister at the Copyright Office statements of all fees, charges or royalties which such society, association or company proposes during the next ensuing calendar year to collect in compensation for the issue or grant of licences for or in respect of the performance of its works in Canada.

S.C. 1936, c. 28, s. 2 ¹;
R.S. 1952, c. C-55, s. 48(2)

1931-1936

10.(1)(b) Statement of fees, charges and royalties

Statements of all fees, charges or royalties which such society, association or company proposes from time to time or at any time to collect in compensation for the issue or grant of licences for or in respect of the performance of such works in Canada.

S.C. 1931, c. 8, s. 10(1)(b)

1996

67.1 (1) Filing of proposed tariffs

Each collective society referred to in subsection 67(1) shall, on or before the March 31 immediately before the date when its last tariff approved pursuant to subsection 68(3) expires, file with the Board a proposed tariff, in both official languages, of all royalties to be collected by the collective society.

Bill C-32 1996, s. 45

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(a) subsections 67(2) and (3);

Bill C-93 1992, s. 127(1)

127(3) Bill C-88

If Bill C-88, introduced in the third session of the thirty-fourth Parliament and entitled *An Act to amend the Copyright Act*, is assented to, then, on the latter of the day on which this section comes into force and the day on

which subsection 3(1) of that Act comes into force, subsections 67(2) and (3) of the *Copyright Act* are repealed and the following substituted therefor:

67(2) Filing statements of royalties

Each society, association or corporation referred to in subsection (1) shall, on or before the first day of September next preceding the date when its last statement approved pursuant to subsection 67.2(1) expires, file with the Tribunal a statement in both official languages of all royalties that the society, association or corporation proposes to collect for the grant of the licences referred to in subsection (1).

Bill C-93 1992, s. 127(3)

67. (3) Where no previous statement

Each society, association or corporation referred to in subsection (1) in respect of which no statement of royalties has been approved pursuant to subsection [49.2(1)] ¹ 67.2(1) shall, on or before the [September 1 immediately preceding] ¹ first day of September next preceding their proposed effective date, file with the [Tribunal] ^{III} Board a statement in both official languages of all royalties that the society, association or corporation proposes to collect for the grant of the licences [for the performance of its works in Canada. and] ^{I II} referred to in subsection (1).

Bill C-60 1987, s. 12 ¹;

S.C. 1988, c. 15, s. 12 ¹;

R.S. 1985(1988), c.10 (4th Supp.), s. 12; ^{II}

S.C. 1993, c. 23, s. 3(1);

S.C. 1993, c. 44, s. 70(1);

S.C. 1993, c. 44, s. 80 ^{III} no assent

1996

67.1(2) Where no previous tariff

A collective society referred to in subsection (1) in respect of which no tariff has been approved pursuant to subsection 68(3) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it, on or before the March 31 immediately before its proposed effective date.

Bill C-32 1996, s. 45

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(a) subsections 67(2) and (3);

Bill C-93 1992, s. 127(1)

127(3) Bill C-88

If Bill C-88, introduced in the third session of the thirty-fourth Parliament and entitled *An Act to amend the Copyright Act*, is assented to, then, on

the latter of the day on which this section comes into force and the day on which subsection 3(1) of that Act comes into force, subsections 67(2) and (3) of the *Copyright Act* are repealed and the following substituted therefor:

67.(3) Where no previous statement
Each society, association or corporation referred to in subsection (1) in respect of which no statement of royalties has been approved pursuant to subsection 67.2(1) shall, on or before the first day of September next preceding their proposed effective date, file with the Tribunal a statement in both official languages of all royalties that the society, association or corporation proposes to collect for the grant of licences referred to in subsection (1).

Bill C-93 1992, s. 127(3)

67. (4) Effective period of statements

A statement of royalties must provide that the royalties are to be effective for periods [of at least one year that begin on January 1 and end on December 31.^{end}] ¹ each of which shall be at least one year and begin on January 1 in any year and end December 31 in any year.

S.C. 1988, c. 15, s. 12 ¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1996

67. (3) Effective period of tariffs

A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

Bill C-32 1996, s. 45

1987

49. (3) Effective period of statements

A statement of royalties shall provide that the royalties are to be effective for a period of at least one year ending on December 31.

Bill C-60 1987, s. 12

67. (5) Prohibition of enforcement

Where a statement of proposed royalties is not filed with respect to a work mentioned in subsection (1), no action shall be commenced for infringement of [the copyright in the work without the written consent of the Minister.^{end}] ¹ the right to perform the work in public, or communicate the work to the public by telecommunication, without the written consent of the Minister.

Bill C-60 1987, s. 12 ¹;

S.C. 1988, c. 15, s. 12 ¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12 ¹;

S.C. 1993, c. 23, s. 3(2);

S.C. 1993, c. 44, s. 70(2)

1936-1988

66.(3) {No action or proceeding to be commenced or continued if non-compliance] ¹ {No action or

proceeding to be commenced or continued where non-compliance] ¹¹ Enforcement of remedies where non-compliance

{If] ¹ Where any [such] ¹ ¹¹ ¹¹¹ society, association or company [referred to in subsection (1)] ¹¹¹¹ {shall refuse or neglect] ¹ refuses or neglects to file with the Minister at the Copyright Office the statement or statements prescribed [by the last preceding subsection hereof,] ¹ by subsection (2), no action or other preceeding to enforce civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by [any such] ¹ ¹¹ ¹¹¹ the association, society or company shall be commenced or continued, unless the consent of the Minister is given in writing.

S.C. 1936, c. 28, s. 2 ¹;

R.S. 1952, c. C-55, s. 48(3) ¹¹;

R.S. 1970, c. C-30, s. 48(3) ¹¹¹;

R.S. 1985, c. C-42, s. 66(3) ¹¹¹¹

1931-1936

10.(3) No excess fees, charges or royalties permitted

No such society, association or company shall be entitled to sue for or to collect any fees, charges or royalties for or in respect of licences for the performance of all or of any such works in Canada which are not specified in the lists from time to time filed by it at the Copyright Office as herein provided, nor to sue for or collect any fees, charges or royalties in excess of those specified in the statements so filed by it, nor of those revised or otherwise prescribed by Order of the Governor in Council.

S.C. 1931, c. 8, s. 10(3)

1996

67.1(4) Prohibition of enforcement

Where a proposed tariff is not filed with respect to the work, performer's performance or sound recording in question, no action may be commenced, without the written consent of the Minister, for

(a) the infringement of rights, referred to in section 3, to perform in public or to communicate to the public by telecommunication, the work, performer's performance or sound recording; or

(b) the recovery of royalties referred to in section 19.

Bill C-32 1996, s. 45

67.1 (1) Publication of statements

As soon as practicable after the receipt of a statement filed pursuant to subsection [49(2)] ¹ 67(2), the Board shall publish it in the *Canada Gazette* and shall give notice that, within twenty-eight days after the publication of the

statement, prospective users or their representatives may file written objections to the statement with the Board.

S.C. 1988, c. 15, s. 12 ^I;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1936-1988

67.(1) Statements to be published

As soon as practicable after the receipt of a statement prescribed by subsection

[two of the last preceding section,] ^I

[(2) of section 48,] ^{II}

[48(2),] ^{III} ^{IV}

66(2), the Minister shall publish them in the *Canada Gazette* [and shall notify that any person *]

^I ^{II} ^{III} ^{IV} ^V together with a notice that any person having any objection to the proposals contained in the statements must lodge particulars in writing of [his] ^I ^{II} ^{III} ^{IV} ^V the objection with the Minister at the Copyright Office on or before a day to be fixed in the notice, not being earlier than [twenty-one days]

^I ^{II} ^{III} ^V twenty-eight days after the date of publication [in the *Canada Gazette* of such notice.] ^I

^{II} ^{III} ^{IV} ^V of such notice in the *Canada Gazette*.

S.C. 1936, c. 28, s. 2 ^I *;

R.S. 1952, c. C-55, s. 48(3) ^{II};

R.S. 1970, c. C-30, s. 49(1) ^{III};

S.C. 1984, c. 40, s. 18(3) ^{IV};

R.S. 1985, c. C-42, s. 67(1) ^V;

R.S. 1985 (1984), c. 10 (1st Supp.), s. 1(2)

*margin heading, with no new paragraph: - Objections to be lodged with the Minister} ^{IV}

1936-1988

67.(2) Statements to be referred to the Board

As soon as practicable after the date fixed in [said notice as aforesaid the Minister] ^I ^{II} the notice referred to in subsection (1), the Minister shall refer the statements and any objection received in response to the notice to a Board to be known as the Copyright Appeal Board.

S.C. 1936, c. 28, s. 2 ^I;

R.S. 1952, c. C-55, s. 49(2) ^{II};

R.S. 1970, c. C-30, s. 49(2) ^{III};

R.S. 1985, c. C-42, s. 67(2) ^{IV}

1996

67.(5) Publication of proposed tariffs

As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, any interested person or their representative may file written objections to the tariff with the Board.

Bill C-32 1996, s. 45

68. (4) Publication of approved tariffs

The Board shall

(a) publish the approved tariffs in the *Canada Gazette* as soon as practicable; and

(b) send a copy of each approved tariff, together with reasons for the Board's decision, to each collective society that filed a proposed tariff and to any person who filed an objection.

Bill C-32 1996, s. 45

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(b) section 67.1;

Bill C-93 1992, s. 127(1)

1987

49.1 (1) Publication of statements

As soon as practicable after the receipt of a statement of royalties filed pursuant to subsection 49 (2), the Board shall publish it in the *Canada Gazette* and shall give notice that any prospective user may file a written objection to the statement, which objection shall be filed with the Board within twenty-eight days after publication of the statement.

Bill C-60, 1987 s. 12

1984

Given the administrative costs and difficulties of publishing those proposals in local newspapers they will continue to be published in the *Canada Gazette*. In addition, other means of making known such tariffs may be established by regulation.

GT pp.64-65

67.1 (2) Board to consider statements and objections

The Board shall, as soon as practicable, consider a statement and any objections thereto referred to in subsection (1) or raised by the Board and

(a) send to the society, association or corporation concerned a copy of the objections so as to permit it to reply; and,

(b) send to the [prospective users] ^I persons who filed objections a copy of the reply thereto.

Bill C-60 1987, s. 12 ^I;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1936-1988

69.(1) Board to consider statements and objections

As soon as practicable after the Minister [shall have] ^I has referred to the Copyright Appeal Board the statements of proposed fees, charges or royalties [as herein provided and] ^I ^{II} ^{III} and the objections, if any,

received in respect thereto, the Board shall proceed to consider the statements and the objections, if any, and may itself, notwithstanding that no objection has been lodged, take notice of any matter [which] ¹ ^{II} that in its opinion is one for objection, [The Board shall,] ¹ [; the Board shall,] ^{II} ^{III} and the Board shall, in respect of every objection, advise the society, association or company concerned of the nature of the objection and shall afford it an opportunity of replying thereto.

S.C. 1936, c. 28, s. 2 ¹;
R.S. 1952, c. C-55, s. 50(6) ^{II};
R.S. 1970, c. C-30, s. 50(6) ^{III};
R.S. 1985, c. C-42, s. 69(1)

1996

68. (1) Board to consider proposed tariffs and objections

The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection 67.1(5) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

68.(2) Criteria and factors

In examining a proposed tariff for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances, the Board

(a) shall ensure that

- i - the tariff applies in respect of performer's performances and sound recordings only in situations referred to in subsections 20(1) and (2),
- ii - the tariff does not, because of linguistic and content requirements of Canada's broadcasting policy set out in section 3 of the *Broadcasting Act*, place some users that are subject to that Act at a greater financial disadvantage than others, and
- iii - the payment of royalties by users pursuant to section 19 will be made in a single payment;

(b) shall take into account

- i - that the tariff applies only in respect of the portion of the total programming of a user that corresponds to performer's performances and sound recordings, and
- ii - that some users, while using music to generate revenue, assist the sale of sound recordings through the playing of that music; and

(c) may take into account any other factors that it considers appropriate.

Bill C-32 1996, s. 45

1986

The government generally agrees with these recommendations... The conditions that will apply to the Board - its jurisdiction, powers, organization and operations - remain, however, to be articulated.

GRCRC 116, p.17

1985

The Board's jurisdiction should be limited to hearing evidence only where a proposed tariff is in dispute.

CRC 116, p.91

1984

To ensure that their distribution schemes are fair and efficient, the societies would be required to file their distribution and monitoring schemes with a revised Copyright Appeal Board. The Board would, on application of a member of a society, have the authority to review the schemes and veto any schemes deemed unfair.

GT pp.62-63

Once an exercise of rights come within the jurisdiction of the Board, all negotiations between societies and users about the right would fall under the jurisdiction of the Board. This would be purely permissive legislation, however, and creators or other copyright owners would not be required to join a society. All copyright owners who are not members of a society would be free to negotiate with users individually. Similarly, other types of societies could arise outside the jurisdiction of the Board. They would be subject to the general provisions of competition law.

GT pp.63-64

67.2 (1) Certification with alterations

On the conclusion of the Board's consideration of a statement, any objections to it and any reply to the objections, the Board shall

(a) certify the statement as approved, with or without such alterations to the royalties and related terms and conditions specified therein as the Board may make;

(b) publish the approved statement in the *Canada Gazette* as soon as practicable; and

(c) send a copy of the approved statement, together with reasons for the Board's decision, to the society, association or corporation concerned and to any [prospective user] ¹ person who filed an objection.

Bill C-60 1987, s. 12 ¹;

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1996

68. (3) Certification

The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions related thereto as the Board considers necessary, having regard to

(a) any objections to the tariffs under subsection 67.1(5); and

(b) the matters referred to in subsection (2).

68.2 (4) Where agreement exists

If there is an agreement approved under subsection 68.3(4), subsections (2) and (3) do not apply in respect of the matters covered by the agreement.

68.2 (5) Retroactivity

The Board, in certifying a tariff as approved under subsection 68(3), may make the approved tariff applicable as of January 1 of the year in which it so certifies that tariff.

68.2 (6) Interim Tariffs

The Board may, if so requested by a collective society referred to in subsection (3), make an order establishing an interim tariff, and in that case the collective society may collect the royalties at those interim rates until the new tariff is approved.

Bill C-32 1996, s. 45

68.3(1) Agreements

Notwithstanding that a proposed tariff is filed with the Board pursuant to section 67.1, a collective society referred to in subsection 67(1) or users may, before the tariff is certified as approved under subsection 68(3), file with the Board an agreement between the society and the users relating to one or more aspects of the proposed tariff.

68.3 (2) Notice of filing of agreement

As soon as practicable after an agreement has been filed pursuant to subsection (1), the Board shall publish a notice of the filing of the agreement in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the notice, any interested person or their representatives may file written objections to the agreement with the Board.

68.3 (3) Application of section 68

Subsections 68(1) and (2) apply, with such modifications as the circumstances require, in respect of the agreement.

68.3 (4) Board's decision

The Board shall, after considering any objections and the criteria referred to in subsection 68(2), either approve or reject the agreement.

68.3 (5) Where agreement rejected

Where the Board rejects the agreement, the parties to it are governed by the tariff that is certified as approved under subsection 68(3).

68.3 (6) Where agreement approved

Where the Board approves the agreement, it shall,

(a) publish it in the *Canada Gazette* as soon as practicable; and

(b) send a copy of it, together with the reasons for the Board's decision, to the parties to it, to each collective society that filed a tariff, and to any person who filed an objection to the agreement.

68.3 (7) Effect of approval

The agreement, if approved by the Board, is binding on the parties to it.

Bill C-32 1996, s. 45

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(c) subsection 67.2(1);

Bill C-93 1992, s. 127(1)

67.2 (1.1) Preferential royalty rate

The Board shall, in certifying a statement as approved under paragraph (1)(a), ensure that there is a preferential rate for small cable transmission systems.

S.C. 1993, c. 23, s. 4(1)

1996

68.1 (4) Preferential royalty rates

The Board shall, in certifying a tariff as approved under subsection 68(3), ensure that there is a preferential royalty rate for small cable transmission systems.

Bill C-32 1996, s. 45

68.1 (1) Special and transitional royalty rates

Notwithstanding the tariffs approved by the Board under subsection 68(3) for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances,

(a) wireless transmission systems, except community systems and public transmission systems, shall pay royalties as follows:

- i - in respect of each year, \$100 on the first 1.25 million dollars of annual advertising revenues, and
- ii - on any portion of annual advertising revenues exceeding 1.25 million dollars,

A - for the first year following the coming into force of this section, twenty per cent of the royalties set out in the approved tariff for that year,

B - for the second year following the coming into force of this section, forty per cent of the royalties set out in the approved tariff for that year,

C - for the third year following the coming into force of this section, sixty per cent of the royalties set out in the approved tariff for that year,

D - for the fourth year following the coming into force of this section, eighty per cent of the royalties set out in the approved tariff for that year, and
 E - for the fifth year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year;
 (b) community systems shall pay royalties of \$100 in respect of each year; and

(c) public transmission systems shall pay royalties, in respect of each of the first five years following the coming into force of this section, as follows:

- i - for the first year following the coming into force of this section, twenty per cent of the royalties set out in the approved tariff for that year,
- ii - for the second year following the coming into force of this section, forty per cent of the royalties set out in the approved tariff for that year,
- iii - for the third year following the coming into force of this section, sixty per cent of the royalties set out in the approved tariff for that year,
- iv - for the fourth year following the coming into force of this section, eighty per cent of the royalties set out in the approved tariff for that year, and
- v - for the fifth year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year.

68.1 (2) Effect of paying royalties

The payment of royalties set out in subsection (1) fully discharges all liabilities of the system in question in respect of the approved tariffs.

68.1 (3) Definition of "annual advertising revenues" -

In subsection (1), "annual advertising revenues" means advertising revenues for the calendar year or for any other twelve month period fixed by the Board.

Bill C-32 1996, s. 45

67.2 (1.2) Regulations

The Governor in Council may make regulations defining "small cable transmission system" for the purposes of subsection (1.1).

S.C. 1993, c. 23, s. 4(1)

1996

68.1 (5) Regulations -

The Governor in Council may make regulations defining "small cable transmission system", "community system", "public transmission system" and "wireless transmission system" for the purposes of this section.

Bill C-32 1996, s. 45

67.2 (2) Effect of fixing royalties

Without prejudice to any other remedies available to it, a society, association or corporation may, for the period specified in its approved statement, collect the royalties specified in the statement or, in default of their payment, recover them in a court of competent jurisdiction.

S.C. 1988, c. 15, s. 12;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1996

68.2 (1) Effect of fixing royalties

Without prejudice to any other remedy available to it, a collective society may, for a period specified in its approved tariff, collect royalties specified in the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

Bill C-32 1996, s. 45

1987

49.2 (2) Effect of fixing royalties

A society, association or corporation may, for the period specified in its approved statement, collect the royalties specified in the statement or, in default of their payment, recover them in a court of competent jurisdiction.

Bill C-60 1987, s. 12

67.2 (3) Right of action barred if royalties tendered or paid

No action shall be brought for the infringement of the right to perform in public, or communicate to the public by telecommunication, a work referred to in subsection 67(1) against a person who has paid or offered to pay the royalties specified in an approved statement.

S.C. 1993, c. 23, s. 4(2);

S.C. 1993, c. 44, s. 71

1988-1993

67.2 (3) Right of action barred if royalties tendered or paid

No action shall be brought for the infringement of the right to perform a work referred to in subsection [49(2)] ¹ 67(1) against a person who has paid or offered to pay the royalties specified in an approved statement.

Bill C-60 1987, s. 12 ¹;

S.C. 1988, c. 15, s. 12 ¹;

R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1936-1952

51.(2) Right of action barred when fees, charges or royalties paid or tendered

No action or other proceeding to enforce any civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by any such society, association or company shall be commenced or continued, and no judgment or sentence shall be rendered in any court against a person who [shall have] ¹ has tendered or who [shall have] ¹ has paid to such society, association or company fees, charges or royalties prescribed by the Governor in Council as aforesaid; [Provided that any] ¹ but any stay of proceedings or extension of stay of proceedings lawfully prescribed by the Minister before the coming into force of the amending Act of 1936 shall continue to be effective until the Governor in Council has prescribed the fees, charges or royalties aforesaid.

S.C. 1936, c. 28, s. 2 ¹;
S.C. 1950, c. 50, s. 10;
R.S. 1952, c. C-55, s. 51(2)

1935-36

10. (4) Right of action barred if royalties tendered or paid

No action or other proceeding to enforce any civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by any association, society or company referred to in subsection one of this section shall be commenced or continued, and no judgment or sentence shall be rendered in any court against any person who has tendered or paid the fees, charges or royalties which are specified, revised or otherwise prescribed pursuant to the provisions of this section.

S.C. 1935, c. 18, s. 1

1935-1936

10. (5) Right of action barred pending enquiry

Unless the consent of the Secretary of State of Canada is given in writing, no action or other proceeding to enforce any civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by any association, society or company referred to in subsection one of this section, shall be commenced or continued, and no judgment or sentence shall be rendered in any court after notice has been published in the *Canada Gazette* that a Commissioner has been appointed under the *Inquiries Act* to make an investigation and report as provided in subsection two of this section; Provided, however, that the stay of

proceedings herein provided shall not be effective for more than six months, unless the Secretary of State in writing extends the time.

S.C. 1935, c. 18, s. 1

** margin heading with no new paragraph - R.S. c. 99*

1996

68.2 (2) Right of action barred if royalties tendered or paid

Subject to subsection (4), no action may be brought for

(a) the infringement of the right to perform in public or the right to communicate to the public by telecommunication, referred to in section 3, or

(b) the recovery of royalties referred to in section 19.

against a person who has paid or offered to pay the royalties specified in an approved tariff.

Bill C-32 1996, s. 45

1984

Once rates and reporting requirements were approved by the Board, anyone could use the works in the society's repertoire after paying the approved fee and meeting the approved reporting requirements regardless of whether the user had a contractual relationship with the society. This provision is comparable to section 50(10) of the current Act which covers the performance of musical works.

GT p.64

1977

That there be no right of action by a collective against an alleged user of copyright material unless and until the Tribunal has been notified by the collective of its existence.

CC p.223

67.3 Continuation of rights

Where a society, association or corporation files a statement of royalties for the performance in public or the communication to the public by telecommunication of its works in accordance with subsection 67(2), any person entitled to perform in public or communicate to the public by telecommunication those works pursuant to the previous statement may do so, even though the royalties set out therein have ceased to be in effect, and the society, association or corporation may collect those royalties despite their ceasing to be in effect until the new statement is approved.

S.C. 1993, c. 23, s. 5;
S.C. 1993, c. 44, s. 72

1988-1993

67.3 Continuation of rights

Where a society, association or corporation files a statement of royalties for the performance of its work in accordance with subsection [49.2] ^I 67(2), any person entitled to perform those works pursuant to the previous statement may do so, even though the royalties set out therein have ceased to be in effect, and the society, association or corporation may collect those royalties despite their ceasing to be in effect until the new statement is approved.

S.C. 1988, c. 15, s. 12 ^I;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 12

1996

68.2 (3) Continuation of rights

Subject to subsection (4), where a collective society files a proposed tariff in accordance with subsection 67.1(1),

(a) any person entitled to perform in public or communicate to the public by telecommunication those works, performer's performances or sound recordings pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and

(b) the collective society may collect the royalties in accordance with the previous tariff,

until the proposed tariff is approved.

Bill C-32 1996, s. 45

68. Rights of societies, etc.

For greater certainty, the same society, association or corporation may carry on both of the businesses referred to in paragraphs 67(1)(a) and (b), as well as the business of a collecting body for the purposes of section 70.61 to 70.67.

S.C. 1993, c. 23, s. 5;
S.C. 1993, c. 44, s. 72

1938-1988

68 Repealed

68.(1) Board constituted

68.(2) Chairman and members

68.(3) Travelling and living expenses

68.(4) Rules and provisions

68(5) Aid in advisory capacity

Bill C-60 1987, s. 13;
S.C. 1988, c. 15, s. 13(2);
R.S., 1985 (1988), c. 10 (4th Supp.), s. 14(1)
see current s. 66-66.4

69. (1) Repealed - Board to consider statements and objections

Bill C-60 1987, s. 13;
S.C. 1988, c. 15, s. 13(2) ^I;
R.S., 1985 (1988), c. 10 (4th Supp.), s. 14(1)
see current s. 67.1(2)

69. (2) Radio performances in places other than theatres

In respect of public performances by means of any radio receiving set in any place other than a theatre that is ordinarily and regularly used for entertainments to which an admission charge is made, no royalties shall be collectible from the owner or user of the radio receiving set, but the Board shall, in so far as possible, provide for the collection in advance from radio broadcasting stations of royalties appropriate to the conditions produced by provisions of this subsection and shall fix the amount of the same.

S.C. 1993, c. 44, s. 73

1938-1993

69.(2) Radio performances in places other than theatres

In respect of public performances by means of any radio receiving set or gramophone in any place other than a theatre [which] ^I that is ordinarily and regularly used for entertainments to which an admission charge is made, no fees, charges or royalties shall be collectible from the owner or user of the radio receiving set or gramophone, but the [Copyright Appeal Board] ^{I II III IV} Board shall [, so far as possible,] ^{I II III V VI} in so far as possible, provide for the collection in advance from radio broadcasting stations or gramophone manufacturers, as the case may be, of fees, charges and royalties appropriate to the new conditions produced by the provisions of this subsection and shall fix the amount of the same. [{.In} ^I {; in so doing, the Board shall take into account all expenses of collection and other outlays, if any, saved or savable by, for or on behalf of the owner of the copyright or performance right concerned] ^{I II III V VI} {or his agents, in consequence of the provisions of this subsection.} ^{I II} {or his agents, in consequence of this subsection.} ^{III} {or the owner's agents, in consequence of this subsection.} ^{V VI}

S.C. 1938, c. 27, s. 4 ^I;
R.S. 1952, c. C-55, s. 50(7) ^{II};
R.S. 1970, c. C-30, s. 50(7) ^{III};
R.S. 1985, c.C-42, s. 69(2) ^{IV};
Bill C-60 1987, s. 13(2) ^V;
S.C. 1988, c. 15, s. 13(2) ^{VI};
R.S. 1985 (1988), c. 10 (4th Supp.), s. 14(2)

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the

wherever the latter word occurs in the following provisions:

(d) subsections 69(2) and (3);
Bill C-93 1992, s. 127(1)

1986

The government accepts these recommendations.

GRCRC 43, 44, p.7

The government agrees with these recommendations in principle.

GRCRC 68, 69, p.10

1985

The revised law should not contain a general exception for the public performance of copyright works by means of jukeboxes, radios, television sets and playback machines.

CRC 43, p.36

The revised law should not contain a general exception from copyright liability for performance of protected works by means of radios, television sets and playback machines that incidentally take place in public.

CRC 44, p.36

The revised law should not contain an exception for the public performance of sound recordings by means of jukeboxes, radios, television sets and playback machines.

CRC 68, p.52

The revised law should contain an exception from copyright liability for uses of sound recordings that incidentally take place in public.

CRC 69, p.52

1984

Before reaching final decisions the government is seeking public comment on two issues:

- Should there be a continuing exemption or other treatment for jukebox performances?
- There will be a limited exemption for certain uses which are essentially private or noncommercial in nature, but which may accidentally be public performances. How should that exemption be defined?

GT p.46

1977

That the exception now allowed by s 50(7) be deleted.

CC p. 160

That the public performance of copyright material by broadcast receivers or similar devices in an enterprise not employing more than three persons for jukebox performances be exempt from paying performing rights.

CC p.161

69. (3) Expenses to be taken into account

In fixing royalties pursuant to subsection (2), the Board shall take into account all expenses of collection and other outlays, if any, saved or savable by, for or on behalf of the owner of the copyright or performing right concerned or his agents, in consequence of subsection (2).

S.C. 1993, c. 44, s. 73

1985-1993

69. (3) Expenses to be taken into account

In fixing fees, charges and royalties pursuant to subsection (2), the Board shall take into account all expenses of collection and other outlays, if any, saved or savable by, for or on behalf of the owner of the copyright or performing right concerned or his agents, in consequence of subsection (2).

R.S. 1985, c.C-42, s. 69(3)

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(d) subsections 69(2) and (3);

Bill C-93 1992, s. 127(1)

69. (4) Repealed - Board may make alterations

S.C. 1988, c. 15, s. 13(3);

R.S. 1985 (1988), c. 10 (4th Supp.), s.14(3)

1936-1988

69. (4) Board may make alterations

[Upon] ^I ^{II} ^{III} On the conclusion of its consideration, the Copyright Appeal Board shall make such alterations in the statements as it may think fit and shall transmit the statements thus altered or revised or unchanged to the Minister certified as the approved statements, [The Minister] ^I [; the Minister] ^{II} ^{III} and the Minister shall thereupon as soon as practicable after the receipt of such statements so certified publish them in the *Canada Gazette* and furnish the society, association or company concerned with a copy of them.

S.C. 1936, c. 28, s. 2 ^I;

R.S. 1952, c. C-55, s. 50(8) ^{II};

R.S. 1970, c. C-30, s. 50(8) ^{III};

R.S. 1985, c. C-42, s. 69(4)

1936-1952

51.(1) Governor in Council may prescribe the fees, etc.

The Governor in Council on the recommendation of the Minister is authorized to prescribe the fees, charges or royalties [which] ^I that any such society, association or company may lawfully sue for or collect in respect of the issue or grant by it of licences for the performance of all or any of such works in Canada until [the first day of January, one thousand nine hundred and thirty-seven. The Governor] ^I the 1st day of January 1937; the Governor in Council may also direct and specify the date from which such fees, charges or royalties shall be deemed to have been so prescribed, [: * Provided that] ^I but the date so directed and specified shall not be earlier than the date upon which, as

appears from the Statements [which] ^I that have been heretofore filed with the Minister at the Copyright Office, such society, association or company proposed to collect the fees, charges and royalties which shall be superseded by the fees, charges and royalties prescribed by the Governor in Council; [: * Provided further that the] ^I the Governor in Council may exercise the power hereby conferred by more than one Order bearing the same or different dates and prescribing the fees, charges or royalties in respect of different classes of performance. [, and that any Order or Orders made as aforesaid by the Governor in Council shall be published as soon as practicable in the *Canada Gazette*.] ^I

S.C. 1936, c. 28, s. 2 ^I *;

S.C. 1950, c. 50, s. 10;

R.S. 1952, c. C-55, s. 51(1)

* margin headings with no new paragraph - Proviso

1931-36

10.(2) Revision of fees, charges and royalties by Governor in Council

Whenever in the opinion of the Minister, after an investigation and report by a Commissioner appointed under the *Inquiries Act*, any such society, association or company which exercises in Canada a substantial control of the performing rights in dramatico-musical or musical works in which copyright subsists, unduly withholds the issue or grant of licences for or in respect of the performance of such works in Canada, or proposes to collect excessive fees, charges or royalties in compensation for the issue or grant of such licences, or otherwise conducts its operations in Canada in a manner which is deemed detrimental to the interests of the public, then and in any such case the Governor in Council on the recommendation of the Minister is authorized from time to time to revise, or otherwise prescribe the fees, charges and royalties which any such society, association or company may lawfully sue for or collect in respect of the issue or grant by it of licences for the performance of all or any such works in Canada.

S.C. 1931, c. 8, s. 10(2)

70.(1) Repealed- Fees, charges and royalties that may be collected

S.C. 1988, c. 15, s. 13(3);

R.S. 1985 (1988), c. 10 (4th Supp.), s. 15

1936-1988

70. (1) Fees, charges and royalties [which] ^I ^{II} ^{III} that may be collected

The statements of fees, charges or royalties [so] ^I ^{II} ^{III} certified as approved by the Copyright Appeal Board shall be the fees, charges or royalties [which] ^I ^{II} ^{III} that the society, association or company concerned may [respectively] ^I ^{II} ^{III} lawfully sue for or collect in respect of the issue or grant by it of licences for the performance of all or any of its works in Canada during the ensuing calendar year in respect of which the statements [were filed aforesaid. and] ^I ^{II} ^{III} were filed.

S.C. 1936, c. 28, s. 2 ^I ;

R.S. 1952, c. C-55, s. 50(8) ^{II} ;

R.S. 1970, c. C-30, s. 50(9) ^{III} ;

R.S., 1985, c. C-42, s. 70(1)

70.(2) Repealed- Right of action barred if approved fees, charges or royalties have been tendered or paid.

S.C. 1988, c. 15, s. 13(3);

R.S. 1985 (1988), c. 10 (4th Supp.), s. 15

see *currents*. 67.2(3)

1936-1988

70.(2) Right of action barred if approved fees, charges or royalties have been tendered or paid

No [such.] ^I ^{II} ^{III} society, association or company shall have any right of action or any right to enforce any civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by [any such.] ^I ^{II} ^{III} the society, association or company against any person who has tendered or paid to [such] ^I ^{II} ^{III} the society, association or company the fees, charges or royalties that have been approved [as aforesaid.] ^I ^{II} ^{III} and by the Copyright Appeal Board.

S.C. 1936, c. 28, s. 2 ^I ;

R.S. 1952, c. C-55, s. 50(10) ^{II} ;

R.S. 1970, c. C-30, s. 50(10) ^{III} ;

R.S. 1985, c. C-42, s. 70(2)

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(e) section 70.2;

Bill C-93 1992, s. 127(1)

COLLECTIVE ADMINISTRATION OF COPYRIGHT

S.C. 1988, c. 15, s. 14 ¹;
R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

46. The heading before section 70.1 and section 70.1 and 70.2 of the Act are replaced by the following:

COLLECTIVE ADMINISTRATION IN RELATION TO RIGHTS UNDER SECTIONS 3, 18 AND 21.

Bill C-32 1996, s. 46

1987

The said Act is further amended by adding thereto, immediately after section 50 thereof, the following heading and sections.

Bill C-60 1987, s. 14

70.1 Definition of "licensing body"

For purposes of section [50.2 to 50.6,] ¹ 70.2 to 70.6, "licensing body" means a society, association or corporation, other than a society, association or corporation referred to in subsection [49(1)] ¹ 67 (1), that

(a) carries on the business of collective administration of copyright for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration; and

(b) operates a licensing scheme applicable in relation to a repertoire of works of more than one author, pursuant to which the society, association or corporation sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section [3(1)] ¹ 3 in respect of these works.

S.C. 1988, c. 15, s. 14 ¹;
R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

Collective Societies

70.1 Collective societies

Sections 70.11 to 70.6 apply in respect of a collective society that operates

(a) a licensing scheme, applicable in relation to a repertoire of works of more than one author, pursuant to which the society sets out classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing

of an act mentioned in section 3 in respect of those works;

(b) a licensing scheme, applicable in relation to a repertoire of sound recordings of more than one maker, pursuant to which the society sets out classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 18 in respect of those sound recordings; or

(c) a licensing scheme, applicable in relation to a repertoire of communication signals of more than one broadcaster, pursuant to which the society sets out classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 21 in respect of those communication signals.

Bill C-32 1996, s. 46

70.11(1) Consultation of repertoire

A collective society referred to in section 70.1 shall make available to the public for consultation, during normal business hours, the repertoire of all works, sound recordings or communication signals in respect of which the collective society has authority to grant such licences, along with such information relating thereto as is prescribed by regulations.

70.11(2) Regulations

The Governor in Council may make regulations prescribing the information to be included in the repertoires mentioned in subsection (1).

Bill C-32 1996, s. 46

70.12 Tariff or agreement

A collective society may, for the purpose of setting out by licence the royalties and terms and conditions relating to classes of uses:

- (a) file a proposed tariff with the Board; or
- (b) enter into agreements with users.

Bill C-32 1996, s. 46

Tariffs

70.13 (1) Filing of proposed tariffs

Each collective society referred to in section 70.1 may, on or before the March 31 immediately before the date when its last tariff approved pursuant to subsection 70.15(1) expires, file with the Board a proposed tariff in both official languages, of all royalties to be collected by the collective society for issuing licences.

70.13 (2) Where no previous tariff

A collective society referred to in subsection (1) in respect of which no tariff has been approved pursuant to subsection 70.15(1) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it for issuing licences, on or before the March 31 immediately before its proposed effective date.

Bill C-32 1996, s. 46

70.14 Application of certain provisions

Where a proposed tariff is filed under section 70.13, subsections 67.1(3) and (5) and subsection 68(1) apply, with such modifications as circumstances require.

Bill C-32 1996, s. 46

70.15 (1) Certification

The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions necessary, having regard to any objections to the tariffs.

70.15(2) Application of certain provisions

Where a tariff is approved under subsection (1), subsection 68(4) and 68.2(1), (5) and (6) apply, with such modifications as circumstances require.

Bill C-32 1996, s. 46

70.16 Distribution, publication of notices

Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board shall notify persons affected by a proposed tariff, by causing a notice to be distributed or published, in such manner and on such terms and conditions as it sees fit.

Bill C-32 1996, s. 46

70.17 Prohibition of enforcement

Subject to section 70.19, no action may be commenced for the infringement of a right referred to in sections 3, 18 or 21, as the case may be, if the collective society has authorized the doing of the act in question.

Bill C-32 1996, s. 46

70.18 Continuation of rights

Subject to section 70.19, where a collective society files a proposed tariff in accordance with section 70.13,

(a) any person authorized by the collective society to do an act referred to in section 3, 18 or 21, as the case may be, pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and

(b) the collective society may collect the royalties in accordance with the previous tariff, until the proposed tariff is approved.

Bill C-32 1996, s. 46

70.19 Where agreement exists

If there is no agreement mentioned in paragraph 70.12(b), sections 70.17 and 70.18 do not apply in respect of the matters covered by the agreement.

Bill C-32 1996, s. 46

70.191 Agreement

An approved tariff does not apply where there is an agreement between a collective society and a person authorized to do an act mentioned in section 3, 18 or 21, as the case may be, if the agreement is in effect during the period covered by the approved tariff.

Bill C-32 1996, s. 46

1987

For the purposes of sections 50.2 to 50.7, "licensing" body means a society, association or corporation that carries on the business of granting licences giving access to a repertoire of works of more than one author and thereby authorizing the doing, in Canada, of an act mentioned in subsection 3(1) in respect to such works, but does not include

(a) a society, association or corporation referred to in subsection 49(1); or

(b) a society, association or corporation when it grants a licence for a particular work, whether or not the work is part of the repertoire.

Bill C-60 1987, s. 14

1977

That the Copyright Tribunal, in addition to the responsibilities already imposed on the Copyright Appeal Board, be responsible for:

c) regulating the collective exercise of copyright with respect to collectives other than Performing Rights Societies: approving licences, and hearing disputes on contracts, licences and changes in royalty rates.

CC p.222

**70.2 (1) [Application to fix amount of royalty] ¹
Application to fix amount of royalty,
etc.**

Where a licensing body and any person not otherwise authorized to do an act mentioned in section [3(1)] ¹ 3 in respect of the works included in the licensing body's repertoire are unable to agree on the royalties to be paid for the right to do the act or on their related terms and conditions, either of them or a representative of either may, after giving notice to the other, apply to the Board to fix the royalties and their related terms and conditions.

S.C. 1988, c. 15, s. 14 ¹;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

Fixing of Royalties in
Individual Cases

70.2(1) Application to fix amount of royalty,
etc.

Where a collective society and any person not otherwise authorized to do an act mentioned in sections 3, 18 or 21, as the case may be, in respect of the works, sound recordings or communication signals included in the collective society's repertoire are unable to agree on the royalties to be paid for the right to do the act or on their related terms and conditions, either of them or a representative of either may, after giving notice to the other, apply to the Board to fix the royalties and their related terms and conditions.

Bill C-32 1996, s. 46

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(e) section 70.2;

Bill C-93 1992, s. 127(1)

1987

Where a licensing body and any person not otherwise authorized to do an act mentioned in subsection 3(1) in respect of the works included in the licensing body's repertoire are unable to agree on the royalties to be paid for the right to do the act, either of them may, after giving notice to the other, apply to the Board to fix the royalties.

Bill C-60 1987, s. 14

70.2 (2) [Fixing royalties] ¹ Fixing royalties, etc.

The Board may fix the royalties and their related terms and conditions in respect of a licence during such period of not less than one year as the Board may specify and, as soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the licensing body and the person concerned or that person's representative.

S.C. 1988, c. 15, s. 14 ¹;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

70.2 (2) Fixing royalties, etc.

The Board may fix the royalties and their related terms and conditions in respect of a licence during such period of not less than one year as the Board may specify and as soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the collective society and the person concerned.

Bill C-32 1996, s. 46

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(e) section 70.2;

Bill C-93 1992, s. 127(1)

1987

The Board may fix the royalties and establish any related terms and conditions in respect of a licence during such period of not less than one year as the Board may specify and as soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the licensing body and the person concerned.

Bill C-60 1987, s. 14

70.3 (1) Agreement

The Board shall not proceed with an application under section [50.2] ¹ 70.2 where a notice is filed with the Board that an agreement touching the matters in issue has been reached.

S.C. 1988, c. 15, s. 14 ¹;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(f) subsection 70.3(1);

Bill C-93 1992, s. 127(1)

1987

The Board shall not proceed with an application under section 50.2 where the licensing body and the person concerned file with the Board a notice that they have reached an agreement.

Bill C-60 1987, s. 14, p. 14

50.5 (2) Effect of new agreement

Where another agreement is concluded, the royalties are, unless the agreement otherwise provides, payable with respect to the period commencing at the expiration of the previous agreement or of the last period specified under subsection 50.2(2).

Bill C-60 1987, s. 14, p. 15

70.3 (2) Idem

An agreement referred to in subsection (1) is effective during the year following the expiration of the previous agreement, if any, or of the last period specified under subsection [50.2(2)] ¹ 70.2(2).

Bill C-60 1987, s. 14 ¹;

S.C. 1988, c. 15, s. 14 ¹;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

70.4 Effect of Board decision

Where any royalties are fixed for a period pursuant to subsection [50.2(2)], ¹ 70.2(2), the person concerned may, during the period, subject to the related terms and conditions fixed by the Board and to the terms and conditions set out in the scheme and on paying or offering to pay the royalties, do the act with respect to which the royalties and their related terms and conditions are fixed and the licensing body may, without prejudice to any other remedies available to it, collect the royalties or, in default of their payment, recover them in a court of competent jurisdiction.

S.C. 1988, c. 15, s. 14 ¹;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

47. Subsection 70.4 of the Act and the heading following it are replaced with the following:

70.4 Effect of Board decision

Where any royalties are fixed for a period pursuant to subsection 70.2 (2), the person concerned may, during the period, subject to the related terms and conditions fixed by the Board and to the terms and conditions set out in the scheme and on paying or offering to pay the royalties, do the act with respect to which the royalties and their related terms and conditions are fixed and the collective society may, without prejudice to any other remedies available to it, collect the royalties or, in default of their payment, recover them in a court of competent jurisdiction.

Bill C-32 1996, s. 47

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(g) section 70.4;

Bill C-93 1992, s. 127(1)

1987

50.4(4) Effect of Board decision

Where any royalties are fixed for a period pursuant to subsection 50.2(2), the person concerned may, during the period, and on paying or offering to pay the royalties, do the act with respect to which the royalties were fixed and the licensing body may collect the royalties or, in default of their payment, recover them in a court of competent jurisdiction.

Bill C-60 1987, s. 14., p.15

50.5(1) Continuation of rights

Where a person is authorized to do an act mentioned in subsection 3(1) pursuant to an agreement with a licensing body or a decision of the Board under subsection 50.2(2), the person may, subject to the same conditions, continue to act after the expiration of the agreement or the period specified in the decision and the licensing body may continue to collect the royalties until another agreement is concluded or the royalties are fixed by the Board.

50.5 (3) Effect of new Board decision

Where the royalties are fixed by the Board under subsection 50.2(2), the royalties payable with respect to the period commencing at the expiration of the previous agreement or of the last period specified under that subsection.

Bill C-60 1987, s. 14, p.15

COLLECTIVE ADMINISTRATION NOT ADOPTED

1. Levy on Blank Audio Recording Media

82. (1) Liability to pay levy

Every person who, for the purpose of trade, manufactures a blank audio medium in Canada or imports blank audio recording medium into Canada

(a) is liable, subject to subsection (2) and section 86, to pay a levy to the collecting body on selling or otherwise disposing of those blank audio recording media in Canada; and

(b) shall, in accordance with subsection 83(8), keep statements of account of the activities referred to in paragraph (a), as well as of exports of those blank audio recording media, and shall furnish those statements to the collecting body.

82. (2) No levy for exports

No levy is payable where it is a term of the sale or other disposal of the blank audio recording medium that the medium is to be exported from Canada, and it is exported from Canada.

Bill C-32 1996, s. 50

83. (1) Filing of proposed tariffs

Subject to subsection (14), each collective society may file with the Board a proposed tariff for the benefit of those eligible authors, eligible performers and eligible makers who, by assignment, grant of licence, appointment of the society as their agent or otherwise, authorize it to act on their behalf for that purpose, but no person other than a collective society may file any such tariff.

83. (2) Collecting body

Without limiting the generality of what may be included in a proposed tariff, the tariff may include a suggestion as to whom the Board should designate under paragraph (8)(d) as the collecting body.

83. (3) Times for filing

Proposed tariffs must be in both official languages and must be filed on or before March 31 immediately before the date when the approved tariffs cease to be effective.

(4) Where no previous tariff

A collective society in respect of which no proposed tariff has been certified pursuant to paragraph (8)(c) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

83. (5) Effective period of levies

A proposed tariff must provide that the levies are to be effective for periods of one or more calendar years.

83. (6) Publication of proposed tariffs

As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, any person may file written objections to the tariff with the Board.

83. (7) Board to consider proposed tariffs and objections

The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (6) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

83. (8) Duties of Board

On the conclusion of its consideration of the proposed tariff, the Board shall

(a) establish, in accordance with subsection (9),

i - the manner of determining the levies, and

ii - such terms and conditions related to those levies as the Board considers appropriate, including, without limiting the generality of the foregoing, the form, content and frequency of the statements of account mentioned in subsection 82(1), measures for the protection of confidential information contained in those statements, and the times at which the levies are payable,

(b) vary the tariff accordingly,

(c) certify the tariff as the approved tariff, whereupon that tariff becomes for the purposes of this Part the approved tariff, and

(d) designate as the collecting body the collective society or other society, association or corporation that, in the Board's opinion, will best fulfill the objects of sections 82, 84 and 86,

but the Board is not obligated to exercise its power under paragraph (d) if it has previously done so, and a designation under that paragraph remains in effect until the Board makes another designation, which it may do at any time whatsoever, on application.

83. (9) Factors Board to consider

In exercising its power under paragraph (8)(a), the Board shall satisfy itself that the levies are just and equitable, having regard, among other factors, to

(a) the amount of the levies payable under comparable laws of other countries;

(b) the nature of the North American sound recording industry; and

(c) any prescribed criteria.

83. (10) Publication of approved tariffs

The Board shall publish the approved tariffs in the *Canada Gazette* as soon as practicable and shall send a copy of each approved tariff, together with the reasons for the Board's decision, to the collecting body, to each collective society that filed a proposed tariff, and to any person who filed an objection.

83. (11) Authors, etc., not represented by collective society

An eligible author, eligible performer or eligible maker who does not authorize a collective society to file a proposed tariff under subsection (1) is entitled, in relation to

(a) a musical work,

(b) a performer's performance of a musical work, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work is embodied,

as the case may be, to be paid by the collective society that is designated by the Board, of the Board's own motion or on application, the remuneration referred to in section 81 if such remuneration is payable during a period when an approved tariff that is applicable to that kind of work, performer's performance or sound recording is effective, subject to the same conditions as those to which a person who has authorized that collective society is subject.

83. (12) Exclusion of other remedies

The entitlement referred to in subsection (1) is the only remedy of the eligible author, eligible performer or eligible maker referred to in that subsection in respect of the reproducing of sound recordings for private use.

83. (13) Powers of Board

The Board may, for the purposes of subsections (11) and (12),

(a) require a collective society to file with the Board information relating to payments of moneys received by the society pursuant to section 84 to the persons who have authorized it to file a tariff under subsection (1); and

(b) by regulation, establish the periods, which shall not be less than twelve months, beginning when the applicable approved tariff ceases to be effective, within which the entitlement referred to in subsection (11) must be exercised.

83. (14) Single proposed tariff

Where all the collective societies that intend to file a proposed tariff authorize a particular person or body to file a single proposed tariff on their behalf, that person or body may do so, and in that case this section applies, with such modifications as the circumstances require, in respect of that proposed tariff.

Bill C-32 1996, s. 50

Distribution of Levies Paid

84. Distribution by collecting body

As soon as practicable after receiving the levies paid to it, the collecting body shall distribute the levies to the collective societies representing eligible authors, eligible performers and eligible makers, in the proportions fixed by the Board.

Bill C-32 1996, s. 50

85. (1) Reciprocity

Where the Minister is of the opinion that another country grants or has undertaken to grant to performers and makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the

Immigration Act or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country; and

(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(2) Reciprocity

Where the Minister is of the opinion that another country neither grants nor has undertaken to grant to performers or makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants those benefits to performers or makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada; and

(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(3) Application of Act

Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2)

(a) applies in respect of performers or makers of sound recordings covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and

(b) applies in respect of a country covered by that statement, as if that country were Canada.

(4) Application of Act

Subject to any exceptions that the Minister may specify in a statement referred to in subsection (1) or (2), the other provisions of this Act also apply in the way described in subsection (3).

Bill C-32 1996, s. 50

Exemption from Levy

86. (1) Where no levy payable

No levy is payable under this Part where the manufacturer or importer of blank audio recording medium sells or

otherwise disposes of it to a society, association or corporation that represents persons with a perceptual disability.

(2) Refunds

Where a society, association or corporation referred to in subsection (1)

(a) purchases blank audio recording medium in Canada from a person other than the manufacturer or importer, and

(b) provides the collecting body with proof of that purchase, on or before June 30 in the calendar year following the calendar year in which the purchase was made,

the collecting body is liable to pay forthwith to the society, association or corporation an amount equal to the amount of the levy paid in respect of the blank audio recording medium purchased.

(3) If registration system exists

If regulations made under paragraph 87(a) provide for the registration of societies, associations or corporations that represent persons with a perceptual disability, subsections (1) and (2) shall be read as referring to societies, associations or corporations that are so registered.

Bill C-32 1996, s. 50

Regulations

87 Regulations

The Governor in Council may make regulations

(a) respecting the exemptions and refunds provided for in section 86, including, without limiting the generality of the foregoing,

i - regulations respecting procedures governing those exemptions and refunds,

ii - regulations respecting applications for those exemptions and refunds, and

iii - regulations for the registration of societies, associations or corporations that represent persons with a perceptual disability;

(b) prescribing anything that by this Part is to be prescribed; and

(c) generally for carrying out the purposes and provisions of this Part.

Bill C-32 1996, s. 50

Civil Remedies

88. (1) Right of recovery

Without prejudice to any other remedies available to it, the collecting body may, for the period specified in an approved tariff, collect levies due to it under the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

(2) Order directing compliance

Where any obligation imposed by this Part is not complied with, the collecting body may, in addition to any other remedy available, apply to a court of competent jurisdiction for an order directing compliance with that obligation.

Bill C-32 1996, s. 50

EXAMINATION OF AGREEMENTS

70.5 (1) Definition of "Director"

For the purposes of this section and section [50.6,] ¹ 70.6, "Director" means the Director of Investigation and Research appointed under the *Competition Act*.

Bill C-60 1987, s. 14 ¹;
S.C. 1988, c. 15, s. 14 ¹;
R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

70.5 (2) Filing agreement with the Board

Where a licensing body concludes an agreement to grant a licence authorizing a person to do an act mentioned in section [3(1)] ¹ 3, the licensing body or the person may file a copy of the agreement with the Board within fifteen days after it is concluded.

Bill C-60 1987, s. 14 ¹;
S.C. 1988, c. 15, s. 14 ¹;
R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

48.(1) Subsection 70.5(2) of the Act is replaced with the following:

70.5 (2) Filing agreement with the Board

Where a collective society concludes an agreement to grant a licence authorizing a person to do an act mentioned in sections 3, 18 or 21, as the case may be, the collective society or the person may file a copy of the agreement with the Board within fifteen days after it is concluded.

Bill C-32 1996, s. 48(1)

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(h) subsections 70.5(2) and (5);

Bill C-93 1992, s. 127(1)

70.5 (3) Idem

Section [32] ¹ 45 of the *Competition Act* does not apply in respect of any royalties or related terms and conditions arising under an agreement filed in accordance with subsection (2).

Bill C-60 1987, s. 14 ¹;
S.C. 1988, c. 15, s. 14 ¹;
R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

70.5 (4) Access by Director

The Director may have access to the copy of an agreement filed in accordance with subsection (2)

Bill C-60 1987, s. 14;
S.C. 1988, c. 15, s. 14;
R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

70.5 (5) Request for examination

Where the Director considers that an agreement filed in accordance with subsection (2) is contrary to the public interest, the Director may, after advising the parties concerned, request the Board to examine the agreement.

Bill C-60 1987, s. 14;
S.C. 1988, c. 15, s. 14;
R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(h) subsections 70.5(2) and (5);

Bill C-93 1992, s. 127(1)

70.6 (1) Examination and fixing of royalty

The Board shall, as soon as practicable, consider a request by the Director to examine an agreement and the Board may, after giving the Director and the parties concerned an opportunity to present their arguments, alter the royalties and any related terms and conditions arising under the agreement, [and section 50.4 applies with] ¹ in which case section 70.4 applies with such modifications as the circumstances require.

S.C. 1988, c. 15, s. 14 ¹;
R.S., 1985 (1988), c. 10, (4th Supp.), s. 16

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(i) section 70.6;

Bill C-93 1992, s. 127(1)

1987

The Board shall, as soon as practicable, consider a request by the Director to examine an agreement and the Board may, after giving the Director and the parties concerned an opportunity to present their arguments,

alter royalties and any related terms and conditions arising under the agreement, in which case sections 50.4 and 50.5 apply with such modifications as the circumstances require.

Bill C-60 1987, s. 14

70.6 (2) Idem

As soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the parties concerned and to the Director.

Bill C-60 1987, s. 14;

S.C. 1988, c. 15, s. 14;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(i) section 70.6;

Bill C-93 1992, s. 127(1)

ROYALTIES FOR RETRANSMISSION

S.C. 1988, c. 65, s. 65

1996

50. The heading before section 70.61 and sections 70.61 to 71 of the Act are replaced by the following:

ROYALTIES FOR CERTAIN EXCEPTIONS

Bill C-32 1996, s. 50

70.61 (1) Filing of statements of proposed royalties

Each society, association or corporation that carries on the business of collecting, for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf for that purpose, royalties for the communication of a work in the manner described in subsection 28.01(2), in sections 70.62 to 70.67 referred to as a "collecting body", may file with the Board a statement of those royalties, but no other person may file any such statement.

S.C. 1988, c. 65, s. 65

1996

71. (1) Filing of proposed tariffs

Each collective society that carries on the business of collecting royalties referred to in

(a) subsection 296(2),

(b) subsection 29.7(2) or (3),

(c) paragraph 31(2)(d), or

(d) subsection 32(5)

shall file with the Board a proposed tariff, but no other person may file any such tariff.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(j) subsection 70.61(1);

Bill C-93 1992, s. 127(1)

1986

As for the scope, implementation and operation of the (retransmission payment) system, when the new legislation is in place, the government intends to proceed as follows:

1. Local signals, which remain to be defined, will be excluded from the new system.

2. The Copyright Appeal Board will study the matter and report to the government on the system to be adopted.

3. The system will be implemented on a date to be set by proclamation.

4. The tariffs set by the Copyright Appeal Board will be subject to a right of review by the Governor in Council.

GRCRC 105 to 109, p.15

1985

The Copyright Appeal Board should determine the total economic value of all retransmission activities in Canada.

CRC 103, p.81

The Board should set a tariff based on the evaluation and whatever other criteria that the Board deems relevant but should not consider the number and composition of the signals carried by an individual retransmission system.

CRC 104, p.82

In assessing the economic value of retransmission activities, the Copyright Appeal Board should assign a lower value to the retransmission of local signals.

CRC 105, p.82

Local signals should be defined as those reaching the broadcaster's target market by whatever means.

CRC 106, p.82

The target market of the broadcaster should be determined by reference to such factors as the content of the programming involved, the marketing activity of the broadcaster, and the origin of the broadcaster's advertising revenues.

CRC 107 p.83

Retransmission systems should be considered within the scope of a broadcaster's target market irrespective of the broadcaster's success in deriving income from it, as long as the broadcaster's own behaviour demonstrates an intent to benefit from it financially

CRC 108, p.83

1977

That the Copyright Tribunal, in addition to the responsibilities already imposed on the Copyright Appeal Board, be responsible for:

- a) establishing the rate for mechanical recording royalties;
- b) fixing those fees required to be paid by cable systems for rediffusion, and establishing the rules governing assessment, collection and distribution of such fees.

CC p.222

3. Regulation of Rediffusion:

a) that, as the granting of the foregoing right will entail determining a basis for and the payment of royalties, appropriate regulatory mechanisms be established.

b) that the Copyright Tribunal fix the appropriate fees and establish the necessary safeguards to ensure the equitable assessment, collection and distribution of royalties to Canadians.

CC pp.143-144

70.61 (2) Times for filing

Statements of royalties must be in both official languages [and those that are proposed to become effective January 1, 1990 must be filed before July 1, 1989 and those that are proposed to become effective on any subsequent January 1 must be filed before the July 1 immediately preceding the date when the approved statement ceases to be effective. ^{and}] and must be filed before March 31 immediately before the date when the approved statement ceases to be effective.

S.C. 1988, c. 65, s. 65 1;
S.C. 1993, c. 15, s. 11

1996

71.(2) Times for filing

A proposed tariff must be

- (a) in both official languages; and
- (b) filed on or before the March 31 immediately before the date that the approved tariff ceases to be effective.

71.(3) Where no previous tariff

A collective society in respect of which no proposed tariff has been certified pursuant to paragraph 73(1)(d) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

Bill C-32 1996, s. 50

70.61 (3) Effective period of statements

A statement of royalties must provide that the royalties are to be

effective for periods of one or more calendar years.

1988, c. 65, s.65

1996

71.(4) Effective period of tariffs

A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

Bill C-32 1996, s. 50

70.62 (1) Publication of statements

As soon as practicable after the receipt of a statement filed pursuant to section 70.61, the Board shall publish it in the *Canada Gazette* and shall give notice that, within twenty-eight days after that publication, prospective retransmitters or their representatives may file written objections to the statement with the Board.

1988, c. 65, s.65

1996

72.(1) Publication of proposed tariffs

As soon as practicable after the receipt of a proposed tariff filed pursuant to section 71, the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, prospective retransmitters, educational institutions, persons with perceptual difficulties or their representatives may file written objections to the tariff with the Board.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:
(k) section 70.62;

Bill C-93 1992, s. 127(1)

70.62 (2) Board to consider statements and objections

The Board shall, as soon as practicable, consider the statement and any objections thereto referred to in subsection (1) or raised by the Board and

(a) send to the collecting body a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

S.C. 1988, c. 65, s.65

1996

72.(2) Board to consider proposed tariffs and objections

The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (1) or raised by the Board and

(a) send to the collective society a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(k) section 70.62;

Bill C-93 1992, s. 127(1)

70.63 (1) Certification

On the conclusion of its consideration of the statements of royalties, the Board shall

(a) establish, having regard amongst others to the criteria established under subsection (4),

(i) a manner of determining the amount of the royalties to be paid by each class of retransmitter, and

(ii) such terms and conditions related to those royalties as the Board considers appropriate;

(b) determine what portion of the royalties referred to in paragraph (a) is to be paid to each collecting body;

(c) vary the statement accordingly; and

(d) certify the statements as the approved statements, whereupon those statements become for the purposes of this Act the approved statements.

S.C. 1988, c. 65, s.65

1996

73.(1) Certification

On the conclusion of its consideration of proposed tariffs, the Board shall

(a) establish, having regard amongst others to the criteria established under section 66.91,

(i) a manner of determining the royalties to be paid by retransmitters, educational institutions and any person making more than one copy or sound recording of a literary,

musical or dramatic work in order to accommodate the needs of a person with a perceptual disability, and

(ii) such terms and conditions related to those royalties as the Board considers appropriate;

(b) determine the portion of the royalties referred to in paragraph (a) that is to be paid to each collective society;

(c) vary the tariffs accordingly; and

(d) certify the tariffs as the approved tariffs whereupon the tariffs become for the purposes of this Act the approved tariffs.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(l) section 70.63;

Bill C-93 1992, s. 127(1)

70.63 (2) No discrimination

For greater certainty, neither the Board, in establishing a manner of determining royalties under paragraph (1)(a) or in apportioning them under paragraph (1)(b), nor the Governor in Council, in varying any such manner under section 70.67, may discriminate between copyright owners on the ground of their nationality or residence.

S.C. 1988, c. 65, s.65

1996

73.(2) No discrimination

For greater certainty, the Board, in establishing a manner of determining royalties under paragraph (1)(a) or in apportioning them under paragraph (1)(b), may not discriminate between the owners of copyright on the ground of their nationality or residence.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(l) section 70.63;

Bill C-93 1992, s. 127(1)

70.63 (3) Publication

The Board shall cause the approved statements to be published in the *Canada Gazette* as soon as practicable and send a copy of each approved statement, together with reasons for the Board's decision, to each collecting body and to any person who filed an objection under section 70.62.

S.C. 1988, c. 65, s.65

1996

73.(3) Publication of approved tariffs

The Board shall publish the approved tariffs in the *Canada Gazette* as soon as practicable and send a copy of approved tariff, together with reasons for the Board's decision, to each collective society that filed a proposed tariff and to any person who filed an objection.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(l) section 70.63;

Bill C-93 1992, s. 127(1)

70.63 (4) Criteria

The Governor in Council may make regulations establishing criteria to which the Board must have regard in establishing under paragraph (1)(a) a manner for determining royalties that are fair and equitable.

S.C. 1988, c. 65, s.65

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(l) section 70.63;

Bill C-93 1992, s. 127(1)

70.64 (1) Special case

The Board shall, in establishing a manner for determining royalties under paragraph 70.63(1)(a), ensure that there is a preferential rate for small retransmission systems.

S.C. 1988, c. 65, s.65

1996

74. (1) Special case

The Board shall, in establishing a manner for determining royalties under paragraph 73(1)(a), ensure that there is a preferential rate for small retransmission systems.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(m) subsection 70.64(1);

Bill C-93 1992, s. 127(1)

1985

Small cable systems serving small and isolated communities should be shielded from any material impact arising from the introduction of a retransmission right.

CRC 109, p.83

70.64 (2) Regulations

The Governor in Council may make regulations defining "small retransmission systems" for the purpose of subsection (1).

S.C. 1988, c. 65, s.65

1996

74. (2) Regulations

The Governor in Council may make regulations defining "small retransmission systems" for purpose of subsection (1).

Bill C-32 1996, s. 50

70.65 Effect of fixing royalties

Without prejudice to any other remedies available to it, a collecting body may, for the period specified in its approved statement, collect royalties so specified or, in default of their payment, recover them in a court of competent jurisdiction.

S.C. 1988, c. 65, s.65

1996

75. Effect of fixing royalties

Without prejudice to any other remedies available to it, a collective society may, for the period specified in its approved tariff, collect royalties specified in the tariff and in default of their payment, recover them in a court of competent jurisdiction.

Bill C-32 1996, s. 50

70.66 (1) Claims by non-members

An owner or person claiming under the owner of the right referred to in paragraph 3(1)(f) in respect of a work who does not authorize a collecting body to collect, for that person's benefit, royalties for the communication of the work in the manner described in subsection 28.01(2) is, if that work is so communicated during a period when an approved statement that is applicable to that kind of work is effective, entitled to be paid those royalties by the collecting body that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collecting body is subject.

S.C. 1988, c. 65, s.65

1996

76. (1) Claims by non-members

An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to

in paragraph 31(2)(d) is, if the work is communicated to the public by telecommunication during a period when an approved tariff that is applicable to that kind of work is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

76. (2) Royalties that may be recovered
An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in subsection 29.6(2), 29.7(2) or (3) or 32(5) is, if such royalties are payable during a period when an approved tariff that is applicable to that kind of work or other subject-matter is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(n) subsections 70.66(1) and (3);

Bill C-93 1992, s. 127(1)

70.66 (2) Exclusion of remedies

The entitlement referred to in subsection (1) is the only remedy of the owner or person claiming under the owner of the right to communicate a work for the payment of royalties for the communication of the work.

S.C. 1988, c. 65, s.65

1996

76. (3) Exclusion of remedies
The entitlement referred to in subsections (1) and (2) is the only remedy of the owner of the copyright for the payment of royalties for the communication, making of the copy or sound recording or performance in public, as the case may be.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(n) subsections 70.66(1) and (3);

and,

Bill C-93 1992, s. 127(1)

70.66 (3) Regulations and orders

The Board may, for the purposes of this section

(a) require a collecting body to file with the Board information relating to payments of royalties collected by it to the persons who have authorized it to collect those royalties; and

(b) by regulation, establish the periods, which shall not be less than twelve months, beginning on the communication of the work, within which the entitlement referred to in subsection (1) must be exercised.

S.C. 1988, c. 65, s.65

1996

76. (4) Regulations

The Board may, for the purposes of this section

(a) require a collective society to file with the Board information relating to payments of royalties collected by it to the persons who have authorized it to collect those royalties; and

(b) by regulation, establish periods of not be less than twelve months within which the entitlements referred to in subsections (1) and (2) must be exercised, in the case of royalties referred to in

i - paragraph 29.6(2)(a), beginning on the expiration of the year during which no royalties are payable under that paragraph,

ii - paragraph 29.6(2)(b), beginning on the performance in public,

iii - subsection 29.7(2), beginning on the making of the copy,

iv - subsection 27.7(3), beginning on the performance in public,

v - paragraph 31(2)(d), beginning on the communication to the public by telecommunication, or

vi - subsection 32(5), beginning on the making of the additional copy or sound recording,

owners who cannot be located.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(n) subsections 70.66(1) and (3);

and,

Bill C-93 1992, s. 127(1)

70.67 (1) Variation by Governor in Council

The Governor in Council may, by order made

(a) within ninety days after the Board has certified statements of royalties, and

S. 70.7 OWNERS WHO CANNOT BE LOCATED

(b) on application filed with the Minister within thirty days after statements are published in the *Canada Gazette*,

vary, as of January 1, being the effective date of the royalties, a manner established under paragraph 70.63(1)(a) of determining their amount, but not their apportionment under paragraph 70.63(1)(b).

S.C. 1988, c. 65, s.65

1992
127. (2) The English version of the said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in subsection 70.67(1) thereof

Bill C-93 1992, s. 127(2)

70.67 (2) Collection

The royalties may be collected even though an application referred to in subsection (1) is filed.

S.C. 1988, c. 65, s.65

OWNERS WHO CANNOT BE LOCATED

70.7 (1) [Circumstances in which licence may be issued] ¹ Circumstances in which licence may be issued by Board

Where, on application to the Board by a person who wishes to obtain a licence to use a published work in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section [3(1)]. ¹ 3.

Bill C-60 1987, s. 14 ¹;

S.C. 1988, c. 15, s. 14 ¹;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

77. (1) Circumstances in which licence may be issued by Board

Where, on application to the Board by a person who wishes to obtain a licence to use:

- (a) a published work,
- (b) a fixation of a performer's performance,
- (c) a published sound recording, or

(d) a fixation of a communication signal

in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section 3, 15, 18 or 21, as the case may be.

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(o) subsections 70.7(1) and (2)

Bill C-93 1992, s. 127(1)

70.7 (2) Conditions of licence

A licence issued under subsection (1) is non-exclusive and is subject to such terms and conditions as the Board may establish.

Bill C-60 1987, s. 14;

S.C. 1988, c. 15, s. 14;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

Bill C-32 1996, s. 50

1992

127. (1) The said Act is further amended by substituting the word "Tribunal" for the word "Board" wherever the latter word occurs in the following provisions:

(o) subsections 70.7(1) and (2)

Bill C-93 1992, s. 127(1)

70.7 (3) Payment to owner

The owner of a copyright may, not later than five years after the expiration of a licence issued pursuant to subsection (1) in respect of the copyright, collect the royalties fixed in the licence or, in default of their payment, commence action to recover them in a court of competent jurisdiction.

Bill C-60 1987, s. 14;

S.C. 1988, c. 15, s. 14;

R.S. 1985 (1988), c. 10, (4th Supp.), s. 16

1996

77. (3) Payment to owner

The owner of a copyright may, not later than five years after the expiration of a licence issued pursuant to subsection (1) in respect of the copyright, collect the royalties fixed in the licence or, in default of their payment, commence action to recover them in a court of competent jurisdiction.

Bill C-32 1996, s. 50

COMPENSATION FOR RESTORATION OF COPYRIGHT OR PERFORMER'S RIGHT

R.S. 1994, c. 47, s. 68

1996

New Heading and Section

COMPENSATION FOR ACTS DONE
BEFORE RECOGNITION OF COPYRIGHT
AND MORAL RIGHTS

Bill C-32 1996, s. 50

70.8 (1) Board may determine compensation

Subject to subsection (2), for the purposes of subsections 28.03(2) and 29(2), the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for enforcement of a right mentioned in subsection 28.03(3).

R.S. 1994, c. 47, s. 68

1996

78. (1) Board may determine
compensation

Subject to subsection (2), for the purposes of subsections 32.4(2) and 33(2), the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for the enforcement of a right mentioned in subsection 32.4(3).

Bill C-32 1996, s. 50

70.8 (2) Limitation

The Board shall not proceed with an application under subsection (1)

(a) where a notice is filed with the Board that an agreement touching the matters in issue has been reached; or

(b) where a court action between the parties for enforcement of a right mentioned in subsection 28.03(3) has been commenced but not finally concluded.

R.S. 1994, c. 47, s. 68

1996

78. (2) Limitation

The Board shall not

(a) proceed with an application under subsection (1) where a notice is filed with the Board that an agreement regarding the matters in issue has been reached; or

(b) where a court action between the parties for enforcement of a right referred to in subsection 32.4(3) has been commenced, continue with an application under subsection (1) until the court action is finally concluded.

Bill C-32 1996, s. 50

70.8 (3) Interim orders

Where the Board proceeds with an application under subsection (1), it may, for the purpose of avoiding serious prejudice to any party, make an interim order requiring a party to refrain from doing any act described in the order until determination of compensation is made under subsection (1).

R.S. 1994, c. 47, s. 68

1996

78. (3) Interim orders

Where the Board proceeds with an application under subsection (1), it may, for the purpose of avoiding serious prejudice to any party, make an interim order requiring a party to refrain from doing any act described in the order until the determination of compensation is made under subsection (1).

Bill C-32 1996, s. 50

CONVENTION OF ROME

R.S. 1952, c. C-55, s. 53

71. Adherence to Rome Copyright Convention

The Governor in Council may take such action as may be deemed necessary to secure the adherence of Canada to the revised Convention for the protection of artistic and literary works [which] ⁱ ⁱⁱ ⁱⁱⁱ that was signed at Rome [the second day of June, 1928, and which is set out in Schedule A to this Act.] ⁱ [the 2nd day of June 1928 and which is set out in the Third Schedule,] ⁱⁱ [the 2nd day of June 1928 and which is set out in Schedule III,] ⁱⁱⁱ June 2, 1928 and that is set out in Schedule III,

S.C. 1931, c. 8, s. 12 ⁱ;

R.S. 1952, c. C-55, s. 53 ⁱⁱ;

R.S. 1970, c. C-30, s. 51 ⁱⁱⁱ;

R.S. 1985, c. C-42, s. 71

1996

Section 51 [current s. 71] of the *Copyright Act*, chapter 55 of the *Revised Statutes of Canada*, 1952, is repealed.

Bill C-32 1996, s. 60

1977

That Canada remain at the present level of international participation in respect of the Berne Convention and the Universal Copyright Convention.

C.C. p.236

PART IV

Redundant, Transitional & Unassigned Provisions by Statute or Bill

S.C. 1921, c. 24

45. (2) Laid before Parliament

Every order in council made under this Act shall be published in the Canada Gazette, and shall be laid before Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

47. Acts of United Kingdom

All the enactments relating to copyright passed by the Parliament of the United Kingdom are, so far as they are operative in Canada, hereby repealed. Provided that this repeal shall not prejudicially affect any legal rights existing at the time of the repeal.

48. Acts of Canada

The Copyright Act, chapter seventy of the Revised Statutes of Canada, 1906, and chapter seventeen of the statutes of 1908, are hereby repealed.

50. Commencement of Act

This Act shall come into force on a day to be fixed by proclamation of the Governor in Council.

S.C. 1923, c. 10

5. Commencement of Act

Section fifty of the said Act is amended by striking out in the first and second line the words "a day to be fixed by proclamation of the Governor in Council" and substituting therefor the words "the first day of January, nineteen hundred and twenty-four, unless sooner proclaimed by proclamation of the Governor in Council."

R.S. 1927, c. C-32

44.(3) Laid before Parliament

Every order in council made under this Act shall be published in the Canada Gazette, and shall be laid before Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

47. Acts of United Kingdom

All the enactments relating to copyright passed by the Parliament of the United Kingdom are, so far as they are operative in Canada, hereby repealed. Provided that this repeal shall not prejudicially affect any legal rights existing at the time of the repeal.

S.C. 1931, c. 8

11. Copies for Library

The publisher of every book published in Canada, within three months after the publication thereof, shall deliver or cause to be

delivered, at his own expense, to the Librarian of Parliament, who shall give a written receipt thereof, two copies of the first edition and two copies of each subsequent edition if such subsequent edition contains additions or alterations either in the letter press or in the maps, prints or other engravings thereto belonging.

S.C. 1935, c. 18

1. {no heading}

10. (5) Right of action barred pending enquiry

Unless the consent of the Secretary of State of Canada is given in writing, no action or other proceeding to enforce any civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by any association, society or company referred to in subsection one of this section, shall be commenced or continued, and no judgment or sentence shall be rendered in any court after notice has been published in the Canada Gazette that a Commissioner has been appointed under the Inquiries Act * to make an investigation and report as provided in subsection two of this section; Provided, however, that the stay of proceedings herein provided shall not be effective for more than six months, unless the Secretary of State in writing extends the time.

*margin heading with no new paragraph - R.S. c. 99

S.C. 1938, c. 27

3. Construction of Act

The Copyright Amendment Act, 1931, as amended by chapter twenty-eight of the statutes of 1936 and by this Act, shall be read and construed with, and as part of, the Copyright Act.

R.S. 1952, c. C-55

52. Copies for Library

The publisher of every book published in Canada, within three months after the publication thereof, shall deliver or cause to be delivered, at his own expense, to the Librarian of Parliament, who shall give a written receipt thereof, two copies of the first edition and two copies of each subsequent edition if such subsequent edition contains additions or alterations either in the letter press or in the maps, prints or other engravings thereto belonging.

S.C. 1977, c. 28

10. Schedule I of the Copyright Act is amended by striking the words "4th day of June 1921" wherever they appear therein and substituting therefor the words "1st day of January, 1924".

S.C. 1984, c. 40

18(4) Subsections (2) and (3) shall come into force on January 1 of the year immediately following the year in which this Act comes into force.

R.S. 1985 (1984), c. 10 (1st Supp.)

1.(3) Coming into force

Subsection (1) and (2) shall come into force on January 1, 1985.

Bill C-60, 1987

15. Reference

The French version of the said Act is further amended by substituting the word "droit" for the word "tantième", with such grammatical modifications as the circumstances require, wherever the latter word occurs in the following provisions:

- (a) subsections 7(1) and (2);
- (b) subsection 14(8);
- (c) subsections 16(6) and (7);
- (d) subsection 42(2)

21(1) Application re moral rights

The rights referred to in section 12.1 of the Copyright Act, as enacted by section 4, subsist in respect of a work during the term mentioned in that Act even if the work was created before the coming into force of section 4.

21(2) Restriction

A remedy referred to in subsection 20 (1.1) of the Copyright Act, as enacted by section 8, may only be obtained where the infringement of the moral rights of the author occurs after the coming into force of section 8.

22. Application re computer programs

Subsection 1(2), the definition of "computer program" in amended subsection 1(3) and amended section 5 apply in respect of a computer program that was made prior to the day on which those provisions come into force but where, by virtue only of amendments to subsections 1(2) and (3) and this section, copyright subsists in a computer program that was made prior to May 27, 1987, nothing done in respect of the computer program before May 27, 1987 shall be construed to constitute an infringement of the copyright.

23. Making of records, perforated rolls, etc.

It shall be deemed not to be an infringement of copyright in any musical, literary or dramatic work for any person to make within Canada during the six months following the coming into force of (amended) section 7 records, perforated rolls or other contrivances by means of which sounds may be reproduced and by means of which the work

may be mechanically performed, if the person proves

(a) that before the coming into force of (amended) section 7, the person made such contrivances in respect to that work in accordance with section 19 of the Copyright Act and any regulation made thereunder, as they read immediately before the coming into force of (amended) section 7; and

(b) that the making would, had it occurred before the coming into force of (amended) section 7, have been deemed not to have been an infringement of copyright by section 19 of the Copyright Act, as it read immediately before the coming into force of (amended) section 7.

12. Restriction

A remedy referred to in subsection 20(1.1) of the Copyright Act, as enacted by section 8, may only be obtained where the infringement of the moral rights of the author occurs after the coming into force of section 8(2).

13. {no heading}

50 (1) Board constituted

Subsections 50(1) to (6) of the said Act are repealed.

24. Infringements before coming into force

Section 46 (1) ... of the Copyright Act as enacted by (amended) Section 11, applies in respect of any alleged infringement of copyright occurring prior to, on or after the day on which section 11 comes into force.

25. Continuation in office

Notwithstanding any other provision of this Act, the members of the Copyright Appeal Board appointed pursuant to section 50 of the Copyright Act, as it read immediately before the coming into force of section 13, continue in office and may continue to perform their duties and exercise their powers to the extent necessary to consider and deal with any application made under section 50 of that Act, before the coming into force of section 13.

26. Coming into Force

Sections 12, 13, 14 and 15 shall come into force on a day to be fixed by proclamation.

S.C. 1988, c. 15, s. 15 &

R.S. 1985 (1988), c. 10 (4th Supp.)

17. References

The French version of the said Act is further amended by substituting the word "droit" for the word "tantième", with such grammatical modifications as circumstances require, wherever the latter word occurs in the following provisions:

- (a) subsections [7(1) and (2)] † 8(1) and (2);
- (b) subsection [14(8)] † 18(2);
- (c) subsections [16(6) and (7)] † 26(2) and (3); and
- (d) subsection [42(2)] 60(2).

S.C. 1988, c. 15, s. 15 †;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 17

23. (1) Application re moral rights

The rights referred to in section [12.1] † 14.1 of the Copyright Act, as enacted by section 4, subsists in respect of a work even if the work was created before the coming into force of section 4.

S.C. 1988, c. 15, s. 21(1) †;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 23(1)

23.(2) Restriction

A remedy referred to in subsection [20(1.1)] † 34(1.1) of the Copyright Act, as enacted by section 8, may only be obtained where the infringement of the moral rights of the author occurs after the coming into force of section 8.

S.C. 1988, c. 15, s. 21(2) †;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 23(2)

23.(3) Idem

Notwithstanding subsection (1) and the repeal by section 3 of subsection [12(7)] † of the Copyright Act, the rights referred to in subsection [12.1] † 14.1 of that Act, as enacted by section 4, are not enforceable against

(a) a person who, on the coming into force of this section, is the owner of the copyright in, or holds a licence in relation to, a work, or

(b) a person authorized by a person described in paragraph (a) to do an act mentioned in subsection [3(1)] † 3 of that Act.

in respect of anything done [while the person] † during the period for which the person described in paragraph (a) is the owner or [while the licence] † for which the licence is in force, and the rights referred to in subsection [12(7)] † 14(4) of that Act continue to be enforceable against a person described in paragraph (a) or (b) during that period as if subsection [12(7)] † 14(4) were not repealed.

S.C. 1988, c. 15, s. 21(3) †;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 23(3)

24. Application re computer program

Subsection 1(2), the definition "computer program" in subsection 1(3) and section 5 apply in respect of a computer program that was made prior to the day on which those provisions come into force but where, by virtue only of subsection 1(2) and (3) and this section, copyright subsists in a computer program that was made prior to May 27, 1987, nothing done in respect of the computer

program before May 27, 1987 shall be construed to constitute an infringement of the copyright

S.C. 1988, c. 15, s. 22
R.S. 1985 (1988), c. 10 (4th Supp.), s. 24

25. Making of records, perforated rolls, etc

It shall be deemed not to be an infringement of copyright in any musical, literary or dramatic work for any person to make within Canada during the six months following the coming into force of section 7 records, perforated rolls or other contrivances by means of which sounds may be reproduced and by means of which the work may be mechanically performed, if the person proves

(a) that before the coming into force of section 7, the person made such contrivances in respect of that work in accordance with section [19 of] † 29 or 20 of the Copyright Act and any regulation made [thereunder, as they read] † under section 33 of that Act as they read immediately before the coming into force of section 7; and

(b) that the making would, had it occurred before the coming into force of section 7, have been deemed not to have been an infringement of copyright by section [19 of] † 29 or 30 of the Copyright Act, as it read immediately before the coming into force of section 7.

S.C. 1988, c. 15, s. 23 †;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 25

26. Infringements before coming into force

Subsection [46(1)] † 64(1) and section [46.1] † 64.1 of the Copyright Act, as enacted by section 11, apply in respect of any alleged infringement of copyright occurring prior to, on or after the day on which section 11 comes into force.

S.C. 1988, c. 15, s. 24 †;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 26

27. Continuation in office

Notwithstanding any other provision of this Act, the members of the Copyright Appeal Board appointed pursuant to section [50] † 68 of the Copyright Act, as it read immediately before the coming into force of section 13, continue in office and may continue to perform their duties and exercise their powers to the extent necessary to consider and deal with any [application made under section 50] † matter before it pursuant to section 69 of that Act before the coming into force of section 14.

S.C. 1988, c. 15, s. 25 †;
R.S. 1985 (1988), c. 10 (4th Supp.), s. 27

28. Coming into force

Sections [12 to 15, 17, 20 and 25] † 12 to 17, 19, 22 and 27 shall come into force on a day to be fixed by proclamation.

S.C. 1988, c. 15, s. 26
R.S. 1985 (1988), c. 10 (4th Supp.), s. 28

Bill C-93 1992

127(3) Bill C-88

If Bill C-88, introduced in the third session of the thirty-fourth Parliament and entitled An Act to amend the Copyright Act, is assented to, then, on the latter of the day on which this section comes into force and the day on which subsection 3(1) of that Act comes into force, subsections 67(2) and (3) of the Copyright Act are repealed and the following substituted therefor:

S.C. 1993, c. 23 & Bill C-88 1993

6. (1) Transitional: Statements of royalties

Notwithstanding section 67 of the Copyright Act, a statement filed with the Copyright Board pursuant to subsection 67(2) or (3) of that Act on or before September 1, 1992

(a) may provide, or

(b) may be amended with leave of the Board, if application therefor is made to the Board within twenty-eight days after the coming into force of this Act, to provide

for the payment of royalties, for the period beginning on the coming into force of this Act and ending at the end of 1993, in respect of the communication of dramatico-musical or musical works to the public by telecommunication, and a statement so filed or amended is effective for that period to the extent that the Board certifies it as approved pursuant to subsection 67.2(1) of the Copyright Act.

6. (2) No duplication of royalties

Where a statement referred to in subsection (1) is certified as approved, the Board shall not certify as approved any other statement filed by the same applicant, to the extent that it provides for royalties in respect of the same act and for the same period as set out in the statement previously certified as approved.

7. Where this Act does not apply

This Act does not apply in respect of statements filed with the Board pursuant to subsection 67(2) or (3) of the Copyright Act on or before September 1, 1991 that relate to any year before 1993.

8. Coming into force

This Act shall come into force on a day to be fixed by order of the Governor in Council.

S.C. 1993, c. 44

60. (2) Application of amendments to s. 10

Subject to subsection 75(2) of this Act, section 10 of the Copyright Act, as enacted by subsection (1) of this section, applies to all photographs, whether made before or after the coming into force of this section.

60. (3) Application of amendments to s. 11

Except as provided by section 75 of this Act,

(a) section 11 of the Copyright Act, as enacted by subsection (1) of this section, applies only in respect of contrivances made after the coming into force of this section; and

(b) section 11 of the Copyright Act, as it read immediately before the coming into force of this section, continues to apply in respect of contrivances made before the coming into force of this section.

74. Schedule II to the said Act is repealed.

75.(1) Application of certain amendments

Subject to subsection (2), amendments to the Copyright Act made by this Act relating to the term of copyright apply in respect to all works, whether made before or after the coming into force of this section.

75.(2) Idem

Where the term of the copyright in a work expires before the coming into force of this section, nothing in this Act shall be construed as extending or reviving that term.

76.(1) Cinematographs

Except as provided by subsection (2) of this section, the Copyright Act, as amended by this Act, applies in respect of all cinematographs, whether made before or after the coming into force of this section, subject to subsection 75(2) of this Act.

76.(2) Idem

Section 10 of the Copyright Act, as that section read immediately before the coming into force of this section and in so far as it governs who is the author of a photograph, continues to apply in respect of all cinematographs made before the coming into force of this section that were, before the coming into force of this section, protected as photographs.

77. Application of section 5

Nothing in section 5 of the Copyright Act, as amended by this Act, confers copyright on works made before the coming into force of this section that did not qualify for copyright under section 5 of the Copyright Act as it read immediately before the coming into force of this section.

78. Transitional re Bill S-17

If Bill S-17, introduced in the third session of the thirty-fourth Parliament and entitled An Act to amend the Copyright Act, the Industrial Design Act, the Integrated Circuit Topography Act, the Patents Act, the Trade-

marks Act and other Acts in consequence thereof, is assented to then,

(a) if section 3 of that Act does not come into force on or before the later of the day on which that Act is assented to and the day on which this Act is assented to, section 3 of that Act is repealed on the later of those days; or

(b) if section 3 of that Act comes into force on or before the later of the day on which that Act is assented to, subsection 65(1) of this Act is repealed on the later of those days.

79.(1) Transitional re Bill C-88

If Bill C-88, introduced in the third session of the thirty-fourth Parliament and entitled An Act to amend the Copyright Act, is assented to and if subsection 1(2) of that Act comes into force before section 53 of this Act comes into force, then, on the day on which subsection 53 of this Act comes into force, the definition of "receiving device" in section 2 of the Copyright Act is repealed.

79.(2) Idem

If Bill C-88, introduced in the third session of the thirty-fourth Parliament and entitled An Act to amend the Copyright Act, is assented to and if subsection 1 of that Act does not come into force before section 53 of this Act comes into force, then section 1 of that Act is repealed on the day on which section 53 of this Act comes into force.

79.(3) Idem

If Bill C-88, introduced in the third session of the thirty-fourth Parliament and entitled An Act to amend the Copyright Act, is assented to, then

(a) if that Act does not come into force on or before the later of the day on which that Act is assented to and the day on which sections 70 to 72 of this Act come into force, section 3, subsection 4(2) and sections 5 of that Act are repealed on the later of those days; or

(b) if that Act comes into force on or before the later of the day on which that Act is assented to and the day on which sections 70 to 72 of this Act come into force, sections 70 to 72 of this Act are repealed on the later of those days.

80. Transitional re Bill C-93

If

(a) Bill C-93, introduced in the third session of the thirty-fourth Parliament and entitled An Act to implement certain government organization provisions of the budget tabled in the House of Commons on February 25, 1992, is assented to before this Act is assented to, and

(b) paragraph 79(3)(b) of this Act does not operate,

then, on the later of the day on which section 143 of that Act comes into force and the day on which section 70 of this Act comes into force, subsections 67(2) and (3) of the Copyright Act, as enacted by subsection 70(1) of this Act, are repealed and the following substituted therefor:

S.C. 1994, c. 47

69. {no heading}

The French version of the Act is amended by replacing the expression "pays partie à la Convention" with the expression "pays partie à la Convention de Berne" in the following provisions:

- (a) subsection 10(2); and
- (b) section 11.

Bill C-32 1996

1. (3) The definitions "artiste-interprète" and "oeuvre artistique" in section 2 of the French version of the Act are replaced by the following: "artiste-interprète" - Toute artiste-interprète ou exécutant.

"oeuvre artistique" Sont compris parmi les oeuvres artistiques les peintures, dessins, sculptures, oeuvres architecturales, gravure ou photographies, les oeuvres artistiques dues à des artisans ainsi que les graphiques, cartes, plans et compilations d'oeuvres artistiques.

20.(2) Transitional

Section 38 of the Copyright Act, as it read immediately before the coming into force of subsection (1) of this section, continues to apply in respect of proceedings commenced but not concluded before the coming into force of subsection (1) of this section.

20. (3) Transitional

Section 39.1 of the Copyright Act, as enacted by subsection (1) of this section, applies in respect of

(a) proceedings commenced but not concluded before the coming into force of subsection (1) of this section; and

(b) proceedings commenced after the coming into force of subsection (1) of this section.

22. (2) Transitional

Subsection (1) applies in respect of

(a) proceedings commenced but not concluded before this section comes into force; and

(b) proceedings commenced after this section comes into force.

48.(2) R.S., c. 10 (4th Supp.), s. 16

Subsection 70.5(3) of the French version of the Act is replaced by the following:

70.5(3) Précision

L'article 45 de la Loi sur la concurrence ne s'applique pas aux redevances et aux modalités afférentes objet de tout entente déposée conformément au paragraphe (2).

49. R.S., c. 10 (4th Supp.), s. 16

Subsection 70.6(1) of the French version of the Act is replaced by the following:

70.6 (1) Examens et fixation

Dès que possible, la Commission procède à l'examen de la demande et, après avoir donné au directeur et aux parties la possibilité de faire valoir leurs argument, elle peut modifier les redevances et les modalités afférentes objet de l'entente, et en fixer de nouvelles; l'article 70.4 s'applique, compte tenu des adaptations nécessaires, à cette fixation.

51. Schedule III to the Act is repealed.

52. (1) The French version of the Act is amended by replacing the word "droits" with the word "redevances", with such modifications as the circumstances require, in the following provisions:

(a) subsection 28.01(2) (renumbered as subsection 31(2)); and,

(b) paragraph 60(2)(b).

52.(2) Subsection 69(2) of the French version of the Act is amended by replacing the reference to "aucun droits" with reference to "aucun redevance".

53. The levies in the first tariffs certified under paragraph 83(8)(c) of the Copyright Act, enacted by section 50 of this Act, become effective at the beginning of the first calendar year following the coming into force of that paragraph, regardless of when the tariffs are so certified, and are effective for a period of two calendar years.

54. For greater certainty, all notices published under subsection 5(2) of the Copyright Act before the coming into force of this section are deemed to have been validly made and to have had force and effect in accordance with their terms.

55. (1) Part II of the Copyright Act, as enacted by section 14 of this Act, shall be construed as a replacement for subsections 5(3) to (6) and section 11 of the Copyright Act as those provisions read immediately before the coming into force of subsection 5(3) and section 8, respectively of this Act.

55(2) The rights conferred by Part II of the Copyright Act, as enacted by section 14 of this Act, shall not be construed as diminishing the rights conferred by subsections 5(3) to (6) and section 11 of the Copyright Act as those provisions read immediately before the coming into force of subsection 5(3) and section 8, respectively, of this Act, in relation to records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced that were made before the coming into force of subsection 5(3) and section 8, respectively, of this Act.

56. Nothing in this Act shall be construed as diminishing rights conferred by section 14.01 of the Copyright Act as that section read immediately before the coming into force of section 12 of this Act.

57. For greater certainty, the amendments to the Copyright Act that eliminate references to "British subject" and "Her Majesty's Realms and Territories" do not affect any copyright or moral rights that subsisted in Canada immediately before the coming into force of those amendments.

58. Nothing in this Act shall be construed as reviving a copyright that expired before the coming into force of this section.

59. Subsection 42(3) of the Copyright Act, chapter C-30 of the Revised Statutes of Canada, 1970, is repealed.

60. Section 51 of the Copyright Act, chapter 55 of the Revised Statutes of Canada, 1952, is repealed.

61. Coming into force

Except as provided by section 62, this Act or any other provisions of this Act, or any provision of the Copyright Act as enacted or amended by this Act, comes into force on a day or days to be fixed by order of the Governor in Council.

62(1) The following provisions come into force or are deemed to have come into force on June 30, 1996:

(a) the definition of "exclusive distributor" in section 2 of the Copyright Act, as enacted by subsection 1(5) of this Act;

(b) section 2.6 of the Copyright Act, as enacted by section 2 of this Act; and

(c) section 27.1 of the Copyright Act, as enacted by section 15 of this Act.

62(2) Notwithstanding subsection (1), the definition "exclusive distributor" referred to in paragraph (1)(a) shall read as follows during the period beginning June 30, 1996 and ending on

the day that is sixty days after the day on which this Act is assented to:

exclusive distributor

means, in relation to a book, a person who has, before or after the coming into force of this definition, been appointed, in writing, by the owner or exclusive licensee of the copyright in the book in Canada, as

(i) the only distributor of the book in Canada or any part of Canada, or

(ii) the only distributor of the book in Canada or any part of Canada in respect of a particular sector of the market.

63(1) No exclusive distributor, within the meaning assigned to that expression by subsection 62(2) of this Act, copyright owner or exclusive licensee is entitled to a remedy referred to in the Copyright Act in relation to an infringement referred to in subsection 27(1) or (2) of that Act, as enacted by section 15 of this Act, during the period beginning on June 30, 1996 and ending on the day on which this Act is assented to, unless

(a) before the infringement occurred, notice in writing has been given to that person referred to in subsection 27.1(1) or (2) of that Act, as enacted by section 15 of this Act, as the case may be, that

i - there is an exclusive distributor of the book in Canada, and

ii - section 27.1 of that Act came into force or was deemed to have come into force on June 30, 1996; and

(b) in the case of an infringement referred to in section 27.1 of that Act, as enacted by section 15 of this Act, the remedy is only in relation to a book that was imported during that period and forms part of the inventory of the person referred to in section 27.1 of that Act on the day on which this Act is assented to.

63(2) No exclusive distributor, copyright owner or exclusive licensee is entitled to a remedy referred to in subsection (1) against an educational institution, library, archive or museum.

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